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ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS.

1881.

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Government of India Central Printing Office.—No. 420 L. D.—20-6-82.—270.

BENGAL SECRETARIAT LIBRARY

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Thursday, the 6th January 1881.

PRESENT:

The Hon'ble Whitley Stokes, C.S.I., C.I.E., Senior Ordinary Member of the Council of the Governor General, *presiding*.
His Excellency the Commander-in-Chief, G.C.B., G.C.S.I., C.I.E.
The Hon'ble Rivers Thompson, C.S.I.
The Hon'ble J. Gibbs, C.S.I.
Lieutenant-General the Hon'ble Sir D. M. Stewart, G.C.B.
Major the Hon'ble E. Baring, R.A., C.S.I.
The Hon'ble B. W. Colvin.
The Hon'ble Mahárájá Jotíndra Mohan Tagore, C.S.I.
The Hon'ble C. Grant.
The Hon'ble H. J. Reynolds.
The Hon'ble G. F. Mewburn.

NEW MEMBER.

The Hon'ble G. F. MEWBURN took his seat as an Additional Member.

BURMA FOREST BILL.

The Hon'ble MR. RIVERS THOMPSON introduce d the Bill to amend the law relating to forests, forest-produce, and the duty leviable on timber in British Burma, and moved that it be referred to a Select Committee consisting of the Hon'ble Mr. Stokes, Mahárájá Jotíndra Mohan Tagore, and Messrs. Colvin and Grant and the Mover. He need not recapitulate the circumstances which had led to this legislation. In the Statement of Objects and Reasons which accompanied the Bill these had been fully detailed, and they were also described in the speech which his hon'ble friend Mr. Aitchison made in the Council on a previous occasion. The subject of legislation for the Burma forests had for a long time occupied the attention of the authorities in British Burma, and it was at one time considered that, when the general Indian Forest Act was passed, it might have been possible to extend it to that Province. It was deemed, however, upon fuller consideration, that, having regard to the fact that the circumstances and the condition of things in Burma, and especially as regarded forests, were very different from those which obtained on this side of India,

it would be better to wait and see the working of that Act in this part of the country before extending its provisions to Burma. He thought experience had justified the course which was then taken, because under the Acts which already existed, it had been found practicable to carry on the work in Burma sufficiently well up to the present time; and the operation of the general Act in India suggested many modifications and changes.

For the last four or five years all that had been needed in connection with the administration and reservation of forests in Burma had been done under the Acts of 1865 and 1869 and the rules which under those Acts had the force of law. It had been found, however, as had been explained by Mr. Aitchison, that there were many things which were not covered by those Acts or rules, and the present opportunity would therefore be taken for giving the necessary powers to the local administration for the proper prosecution of such work, especially as the forests being rich and valuable in themselves, effective rules for their protection were of the greatest importance both administratively and financially.

In undertaking legislation now it was thought advisable to repeal all existing Acts and rules in force at the present time, and to present to the Council a complete and consolidating measure which should comprise in one Act all that was necessary in relation to forest-administration in Burma; and that was provided for by the second section of the Bill which he had now the honour to submit to the Council. It would be found that in the present Bill, both as regarded the definitions and the general substance of its provisions, the Act of 1878 had been mainly followed and adopted. He would briefly draw attention to a few points in which modifications in that Act were rendered necessary. Chapter II of the Bill, which dealt with reserved forests and the procedure to be adopted in reserving such forests, was perhaps, both in the Bill and the Act of 1878, the most important part of the subject. The chapter in the Bill followed in all essential particulars the lines of the Indian Forest Act, and, where new provisions had been adopted, it was with reference to the particular circumstances and conditions of land-tenure in British Burma. Thus, under section 5 of the Bill, which corresponded with section 3 of the Act, it was provided that the Chief Commissioner might from time to time constitute any land, over which no person had any rights, into a reserved forest. In the Act of 1878 the action of Government was limited to land which was the property of Government. The fact was that in Burma the Government possessed the proprietary right over all land except where rights had been created by the Government itself, such as by waste-land grants or any other such alienations. Thus, the extent to which the authority of the Government extended in Burma

was very much larger than on this side of India, where much property was in the hands of large proprietors and zamíndárs, and not almost exclusively, as in Burma, in the hands of Government. It would be noticed again in the last clause of that section a new provision had been added. In the conduct of operations for the demarcation and reservation of State forests, it was proposed that the Government should have power to appoint a Forest-Settlement-officer. In all inquiries of this kind in British Burma, very careful investigations into private rights and interests were essentially necessary amongst a people who were rude and uneducated and perhaps unable or unwilling to assert their own rights; and so it had always been thought necessary to entrust the duty of enquiry into all forest-rights in Burma to officers who were independent of the Forest Department, on the not unnatural assumption that such officers in the course of such enquiries might be led to exercise an unconscious bias in the direction of their own departmental interests. In Burma, therefore, it was proposed that the chief officer to be entrusted with the duty should be in no way connected with the Forest Department; he might be a civilian or some other officer; and though a Forest-officer might be associated with such Forest-Settlement-officer in the investigation and record of all independent claims and privileges, it was intended that he should always act in subordination to the Forest-Settlement-officer. Under the Indian Forest Act, power was given to the Local Government to constitute a body of three persons for conducting these duties, one of whom might be a Forest-officer, who would therefore act as a colleague and not in a subordinate capacity.

In the 16th section of the Bill, which corresponded with the 16th section of the Act, an alteration had been made. Under the Act, in the conduct of these demarcation inquiries, appeals from the decisions of Forest-Settlement-officers might be referred to a Court, which was called in the Act a "Forest Court," composed of three persons to be appointed by the Local Government. That provision had been omitted entirely from the Burma Bill. In British Burma, in ninety-nine cases out of a hundred, all questions at issue would probably be settled on the spot; and if appeals were preferred from such decision, it was provided that they should go to the chief executive officer of the district, the Deputy Commissioner, whose decision, though final as regarded any right of appeal, was open to revision on all points by the Chief Commissioner of the Province. It would be seen that ample provision had been made in the Bill for the settlement of all appeals without recourse being necessary to the elaborate constitution of a Forest Court to take up appeals.

As regarded offences under the Act, an important departure had been made from the rule which prevailed under the Act. In the Bill, though the offences

were the same in number and character, it would be found that the penalties attached to them were different. In the Act, all offences were punishable with imprisonment which might extend to six months, or to a fine which might extend to rupees five hundred. In three cases which embraced lesser offences, such as trespass or damage by neglect, or the infraction of rules, it had been thought proper to modify to a large extent the power of punishment, which had been limited in the Bill to a fine which might extend to rupees fifty only, or, when the damage resulting from the offence amounted to more than rupees twenty-five, to double the amount of such damage. For the rest of the offences the punishment was the same as under the Act.

The provision relating to village-forests which came under chapter III of the Bill differed from the corresponding provisions of the Act in as far as they gave power to constitute *any* forest which was at the disposal of Government a village-forest, and not only such as had already been declared reserved forests. The privileges allowed to village-communities were much wider and more liberal under the Bill than those given under the Indian Act. The object was to secure to all village-communities the privilege of pasture and the use of such timber and wood for domestic purposes as were in immediate proximity to their homes. Such prescriptive rights had always existed in Burma, and it was the object of the Bill to maintain them.

The provisions in the Act which related to protected forests were not necessary in Burma, where all land was the property of Government, and only here and there rights of user obtained. It would not be necessary to make special provisions for forests outside the area of reserved or village-forests There were only two kinds of forests included in the Burma Bill. In the Indian Act there were three, including protected forests, in which the Government had rights, though they were not reserved forests. Still outside reserved forests it would be necessary, on account of the great value of the teak-wood. to protect teak timber, and to give power to reserve other special classes of wood which, in the discretion of the Chief Commissioner, he might deem it advisable to protect.

Chapter VI of the Indian Forest Act, which related to the control over forest land not the property of Government, for which provision was made in the Indian Act, was not necessary in British Burma on the grounds which he had stated, as the proprietary right in all forests there pertained to Government.

In chapters V and VI the general provisions of the Indian Act had been followed, and so also he might say as regarded the collection of drift and stranded timber found in chapter VII of the Bill.

The draft of this measure had for a considerable time been in the hands of the local authorities in British Burma, and had received the attention of more than one Chief Commissioner and a large body of officers experienced in forest-administration there. Its importance to the Province would be very great from the fact that it affected very large and valuable State forest-domains from which an important revenue was already realised, amounting as it did in one year to something more than Rs. 17,00,000. It was impossible to state to what extent these revenues might yet be developed, and the object of the present legislation was directed both to the conservation of this very valuable property on scientific principles, and to the protection of the privileges and rights of the village-communities in the reasonable use of wood and other forest-produce in the neighbourhood of their villages. He could scarcely conclude without recording the acknowledgments which were due to Mr. Brandis, the Inspector General of Forests under the Government of India, for the assistance he had rendered in the legislation now proposed. In Burma, especially, Mr. Brandis had rendered invaluable service when, as Conservator of Forests there, he had, against much local opposition, recognised and secured the rights of the Government in this extensive property, and laid down the rules for its efficient administration. The conservancy of forests on right principles there, both in the interests of the Government and of the people, was due to his foresight and persistency: and if the Bill which he (MR. RIVERS THOMPSON) now presented to the Council became law, he believed it would materially help the Local Government in carrying out the work to a successful completion.

The Motion was put and agreed to.

The Hon'ble MR. RIVERS THOMPSON also moved that the Bill be published in the *British Burma Gazette* in English and in such other languages as the Local Government might think fit.

The Motion was put and agreed to.

BENARES FAMILY DOMAINS BILL.

The Hon'ble MR. COLVIN presented the Report of the Select Committee on the Bill to amend Bengal Regulation VII of 1828.

FORT WILLIAM MAGISTRATES BILL.

The Hon'ble MR. REYNOLDS moved for leave to introduce a Bill to provide for the better government of Fort William. He said the object of this Bill was to enable the Local Government to make rules for the better government of Fort William; and to establish a court for the trial of persons charged with breaches of such rules.

It had always been the practice for the Garrison Quarter-Master of the Fort to take cognizance of offences against garrison rules, and to punish infractions of such rules by suttlers, camp-followers and other persons connected with the Fort. But though this jurisdiction had the support of prescription and usage, it seemed to be at least doubtful whether it rested upon any solid legislative foundation. So long ago as October 1877, the question was raised by the Brigadier General in command of the Presidency District, who suggested that the necessary powers should be given to the Garrison Quarter-Master under the Articles of War. On consideration, it appeared that this proposal would not fully meet the necessities of the case, and that the object aimed at could not be attained by the extension of the Cantonment Act to the Fort under the orders of the Local Government. He belived the Council would recognize the necessity of there being some officer in the Fort legally empowered to enforce obedience to such rules as the Government might prescribe, both in matters of sanitation, and for the purpose of preserving order; and the Government was advised that, for this purpose, fresh legislation was required. The Bill which it was proposed to introduce was of a short and simple character, and was based upon a draft submitted by the Government of Bengal, after receiving the report of a Committee consisting of the General Commanding the Presidency Division, the Commissioner of Police, and the Senior Magistrate of Calcutta.

The main principles of the Bill were two in number—first, the Local Government was empowered to lay down rules in certain matters specified in a schedule attached to the Bill, and to prescribe certain penalties for any breach of such rules; and secondly, the Bill provided for the appointment of a commissioned officer of the Army (whom it was proposed to call the Fort Magistrate) to try persons charged with any breach of the rules in question. It was not intended, however, to do away with the jurisdiction of the Presidency Magistrates. The Bill, if introduced, would give the Fort Magistrate power to inflict light punishments for petty offences; but cases might arise of a more serious character, and it might be necessary to proceed with greater severity against persons who might be convicted of repeated violations of the rules. It was therefore proposed that the present jurisdiction of the Presidency Magistrates should be saved. The only other section which seemed to call for notice was a section which declared valid all sentences which might have been passed by the Garrison Quarter-Master under the procedure hitherto in force.

The Motion was put and agreed to.

MADRAS PORT-DUES BILL.

The Hon'ble MR. GIBBS presented the report of the Select Committee on the Bill to enhance the rate of port-dues leviable at Madras. He said that Hon'ble Members were aware that this was a Bill to provide for the interest on the sum to be expended on the new Madras Harbour. The Committee had received a communication from the Madras Government, in which they expressed the opinion that a port-due at the rate of six annas a ton would cover all the charges which were likely to fall under this head; but the Select Committee, on considering the matter, came to the conclusion that it was better to leave the maximum rate at eight annas per ton, as provided in the draft Bill. Because that was the maximum, it did not follow that the full rate would be levied. The rate of dues to be levied would be determined by the Local Government according to the amount which would be actually required.

SUNDRY BILLS.

The Hon'ble MR. STOKES moved that the Hon'ble Mr. Mewburn be added to the Select Committees on the following Bills:—

To exempt Parsís from certain provisions of the Administrator General's Act, 1874.

To provide for the registration of Trade-marks.

To regulate the importation, possession, and transport of Petroleum and other substances of a like nature.

The Motion was put and agreed to.

NORTH-WESTERN PROVINCES RENT ACT, 1873, AMENDMENT BILL.

The Hon'ble MR. COLVIN presented the Report of the Select Committee on the Bill to amend the North-Western Provinces Rent Act, 1873. He said he would reserve the observations which he wished to make until the next week when he hoped to move that the Bill be taken into consideration.

PROBATES AND ADMINISTRATION BILL.

The Hon'ble MR. STOKES presented the further Report of the Select Committee on the Bill to provide for the grant of probates of wills and letters of administration to the estates of certain deceased persons.

DISTRICT DELEGATES BILL.

The Hon'ble MR. STOKES also presented the further Report of the Select Committee on the Bill to make further provision for the grant of probates of wills and letters of administration in non-contentious cases.

INDIAN GOVERNMENT SECURITIES BILL.

The Hon'ble MR. STOKES requested permission to postpone the motions relating to the Bill to provide for certain matters relating to Securities of the Government of India.

Leave was granted.

The Council adjourned to Friday, the 14th January, 1881.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

CALCUTTA;
The 6th January, 1881.

Government of India Central Printing Office.—No. 189 L. D.—21-7-84.—70.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 14th January, 1881.

PRESENT:

The Hon'ble Whitley Stokes, C.S.I., C.I.E., Senior Ordinary Member of the Council of the Governor General, *presiding.*

His Excellency the Commander-in-Chief, G.C.B., G.C.S.I., C.I.E.

The Hon'ble Rivers Thompson, C.S.I.

The Hon'ble J. Gibbs, C.S.I.

Lieutenant-General the Hon'ble Sir D. M. Stewart, G.C.B.

Major the Hon'ble E. Baring, R.A., C.S.I.

The Hon'ble B. W. Colvin.

The Hon'ble Mahárájá Jotíndra Mohan Tagore, C.S.I.

The Hon'ble C. Grant.

The Hon'ble H. J. Reynolds.

The Hon'ble G. F. Mewburn.

INDIAN GOVERNMENT SECURITIES BILL.

The Hon'ble MR. STOKES presented the Report of the Select Committee on the Bill to provide for certain matters relating to securities of the Government of India.

The Hon'ble MR. STOKES also moved that the Report be taken into consideration. He said the Select Committee had made only one slight verbal amendment. Another change—MR. STOKES could not call it an amendment—had been suggested by an eminent banking authority: in deference to him the passing of the Bill had been postponed; but on consideration he wisely withdrew the suggestion.

The Motion was put and agreed to.

The Hon'ble MR. STOKES then moved that the Bill as amended be passed.

The Motion was put and agreed to.

NORTH-WESTERN PROVINCES RENT ACT, 1873, AMENDMENT BILL.

The Hon'ble MR. COLVIN moved that the Report of the Select Committee on the Bill to amend the North-Western Provinces Rent Act, 1873, be taken

into consideration. He said that the object of the Bill had been fully explained at the time when it was introduced, and that the amendments which had been made had received sufficient notice in the report submitted by the Select Committee. They were mostly of no great importance, and were intended to remedy recognized defects and omissions in the Rent Law of the North-Western Provinces—defects and omissions which had come to light in the working of the Act during the last seven years. He should pass over in silence, therefore, most of these amendments, which had nearly all originated with the officers to whom the administration of the law was entrusted and had received the approval of the Local Government; unless explanation or further information in respect of any of them should be required of him. There were one or two matters, however, contained in the Bill which it did not seem desirable to pass over without more particular notice. The first of these was the alteration which had been made in section 23 of the Rent Act. The intention of that section had originally been to enable the Local Government, whenever it thought fit to suspend or remit the revenue due from landholders, to compel them at the same time to extend the indulgence to their tenants by suspending or remitting the rent due from them. That this had been the real intention of the section was abundantly evident from the speeches made by Mr. Inglis and Sir William Muir at the time when the Act was passed. Before that section became law, there had been no certainty that the tenants would receive any benefit whatever from the relief which the Government might be willing to concede in cases of calamity, and that the landlord, after he had been excused from the payment of revenue might not, if he chose, exact rent to the uttermost farthing from the cultivators who held under him. No argument, Mr. Colvin conceived, was required to shew that this state of affairs required a remedy. Unfortunately, by an oversight in the wording of section 23, instead of applying a remedy to this recognized evil, something more had been done, and the power of demanding a remission or suspension of rent had been placed in the hands of the tenants. As the law now stood, any tenant who could prove that he had lost more than half his crop, however small that crop might be, could apply for the benefit of the section, and it was declared that he should then be entitled to the remission or suspension of his rent, and that the landlord should be similarly entitled to a corresponding remission or suspension of revenue. Any tenant, therefore, however insignificant his tenure might be, might set the section in motion, and if he proved his loss, was able to compel the Government to remit revenue. This result was objectionable on all grounds. It deprived the Government of control over the revenue, with which it never could properly part. It was also at variance with the principle of the thirty years' settlement, which took no account of petty gains and losses, but

dealt with the village, or mahál, as the unit of landed property, and left all variations of profit in particular years out of consideration. Besides this, it was impossible to give effect to section 23 in years of general calamity. If, for instance, the crops had suffered in a single village or pargana, as they did over whole districts in the autumn of 1877, no one who had had experience of the working of section 23 could doubt that the cultivators would have been entitled to relief and would have taken action under it. The Government could not, however, in such cases of general calamity, undertake the minute field-to-field enquiry which section 23 and the rules framed under it required, because the cost of such an enquiry would simply be ruinous; and therefore, when applications for relief were most numerous and made on the best grounds, it was found in practice that the section must be set aside. Briefly, it might be said that the object of section 23 had been to ensure to individual cultivators the benefit of all remissions that might be made. Its practical effect had been to make the Government responsible for every calamity of season which might befall any tenant in the country. The Committee, therefore, in view of these arguments and of the weight of authority in favour of a change, had considered it proper to amend the section, so as to make it express what had been the real intention of the framers of the law, and what seemed to them to be the right meaning to give it.

One other point in the Bill might be briefly noticed. It happened sometimes that, in the course of an application under the Rent Law, a question of title arose, and it had been considered doubtful how far the decision of the Revenue Courts in such cases should be final. On the one hand, it did not seem right, when some question of title had been decided, that the decision should for ever bar the person against whom it had been made from bringing a suit in the Civil Court. On the other hand, there were great objections to allowing a summary decision to be passed on points provisionally and subject to reconsideration in a regular suit, as it was the inevitable tendency in such cases of a summary proceeding to become as long and elaborate as a regular one, by which the cost and delays of litigation were doubled. The Committee proposed to get over the difficulty by empowering the Revenue Court, in the course of a summary proceeding, to direct any party to file a suit in the Civil Court for the determination of any question at issue which appeared to the Revenue-officer to be better fitted for decision by the Civil Court. That seemed to be the best solution possible of the difficulty, and it was the one which had been advocated by the Local Government.

These were the only two substantive provisions of the Bill in respect of which any observations seemed necessary. There remained, however, a question

of form to be dealt with. It would be seen by paragraph 20 (the last paragraph) of the Committee's report, that the Committee did not recommend the Bill to be passed in its present shape. An Act which consisted of such fragmentary alterations and verbal changes as this did—a thing of shreds and patches—was never very intelligible. Indeed, it was not intelligible at all, unless the Act amended was placed alongside the amending one, and that might not always be at hand. It was more convenient, when possible, to have the whole law on one subject contained in a single enactment. He knew of no practical objection to repealing the present law and re-enacting it in a consolidated shape so long as the numbering of the sections remained unaltered. To alter the numbering of the sections would, of course, be inconvenient to persons who were familiar with the present law. In the case of the present Act, however, the necessary changes could be made and a consolidating Act passed without any disturbance of the numbering of the sections, and the Committee had accordingly recommended that this should be done. It would not cause any delay beyond that of a very few days, he hoped, and the gain to all who were concerned with the Act would be great. No change would be made either in the frame or in the wording of the present Act, except by the introduction of the amendments which the Bill contained. It was possible that the drafting of the former Act might be susceptible of improvement in many respects, but there was no present necessity for any such improvements, because the Act in practice had worked very successfully, and he thought it would be perfectly safe to leave any such further amendments till the time came, whenever that might be, for a complete revision of the Act.

The Motion was put and agreed to.

The Hon'ble Mr. Colvin also moved that the Bill be referred back to the Select Committee, with a view to the course recommended in the last paragraph of their report being carried out.

The Motion was put and agreed to.

PROBATES AND ADMINISTRATION BILL.

The Hon'ble Mr. Stokes moved that the further Report of the Select Committee on the Bill to provide for the grant of probates of wills and letters of administration to the estates of certain deceased persons, be taken into consideration. He said that the Council would see from the report that the Committee had made only two changes of any importance: one was the omission of the section inserted in the Bill as previously settled, under which it would have been obligatory, outside the Lower Provinces, to obtain

probate of a will of property exceeding rupees one thousand. This matter was intimately connected with the extension of the Hindú Wills Act—a project of law which was still under the consideration of the Executive. For this reason, and also because some of the Local Governments were averse to anything like compulsion, the majority of the Committee had voted for expunging the section. The Bill had thus become, as it was at first, a purely permissive measure. But it would not, he hoped, be the less effective. For as soon as it came fully into force and was understood by the people, its necessary effect in quieting titles, obviating litigation as to the ownership of the property of a deceased person, and thereby increasing the value of that property, would induce them to avail themselves largely of its provisions.

The other change was the insertion of a clause providing that, when, after a certificate under Act XXVII of 1860 had been granted, probate or administration was granted in respect of the same estate, the fee payable on the latter grant should be reduced by the amount of the fee payable on the former grant. The object of this was, of course, to induce people to avail themselves of the system established by the Bill, which, inasmuch as it conferred a complete representative title, good against the world, was superior to the certificate system, which really established no right beyond that of collecting debts, and this only as against the debtors.

The Motion was put and agreed to.

The Hon'ble MR. STOKES also moved that the following proviso be added to section 2, that is to say:—

"Provided also that, except in cases to which the Hindú Wills Act, 1870, applies, no Court in any local area beyond the limits of the towns of Calcutta, Madras and Bombay and the territories for the time being administered by the Chief Commissioner of British Burma, and no High Court in exercise of the concurrent jurisdiction over such local area hereby conferred, shall receive applications for probate or letters of administration until the Local Government has, with the previous sanction of the Governor General in Council, by a notification in the official Gazette, authorized it so to do."

He said that the object of this addition was to give substantial effect to the wishes implied in a recent Legislative Despatch of the present Secretary of State for India, in which Lord Hartington suggested to the Government of India the expediency of leaving it to the Local Governments to apply the proposed Act from time to time to such part of the territories respectively under them as they should consider to be fitted for it. A reference to section 59 and chapter XIV of the Bill would shew how difficult it would be to give effect in form to this suggestion. The Presidency-towns and British Burma, where the Bill was urgently wanted, were exempted from this proviso, and there

the Bill in its entirety would come into force on the 1st April next. The result would be that, in the Presidency-towns, Natives would for the first time be able to obtain grants of administration affecting immoveable as well as moveable property and grants limited to certain property or for certain purposes. In Burma the people had, he understood, found out the comparative uselessness of Act XXVII of 1860; and the Judge of Maulmain had informed us that the passing of the Bill was awaited by the representatives of at least one large estate. Moreover, as he (MR. STOKES) had explained when introducing the Bill, doubts had been raised in Burma as to the validity of certain grants of probate and administration which had been made by the Recorder of Rangoon. It was expedient to lay these doubts as soon as possible, and section 154 of the Bill would do so.

The Motion was put and agreed to.

The Hon'ble MR. STOKES then moved that, to section 3 the following clause be added, that is to say :—

"'District Judge' means the Judge of a principal Civil Court of original jurisdiction."

He said that the necessity for this amendment arose from the fact that the General Clauses Act, I of 1868, declared that the expression "District Judge" should not include a High Court in the exercise of its original civil jurisdiction; but the Bill was intended to apply to the High Courts on the original side.

The Motion was put and agreed to.

The Hon'ble MR. COLVIN, in the absence of the Hon'ble Mr. Kennedy, moved that, for section 152 of the Bill, the following two sections be substituted, that is to say :—

"152. In the said Act No. XXVII of 1860, section three, after the word 'title,' the following shall be inserted, namely,—'and shall state the amount of the assets of the deceased person likely to come to the hands of the heirs, executors or other representatives of such person.'

"Act XXVII of 1860, section 3, amended

"To the same section the following shall be added, namely :—

"In determining such right, the Court shall have regard to the provisions of the Probate and Administration Act, 1881.

"Act VII of 1870, schedule Nos 11 and 12, amended.

"153. In the Court-fees Act, 1870, schedule I, Nos. 11 and 12,

"(a) in the second column, after the words 'one thousand rupees,' the following shall be inserted, namely :—

"*Explanation.*—In the case of a certificate under Act No. XXVII of 1860, such property shall be deemed to include all assets of the deceased person likely to come to the hands of the heirs, executors or other representatives of such person; and

"(*b*) in the third column, after the words 'amount or value,' the following shall be inserted, namely:—

"Provided that, when, after a certificate has been granted as aforesaid in respect of any estate, probate or letters of administration is or are granted in respect of the same estate, the fee payable in respect of such latter grant shall be reduced by the amount of the fee paid in respect of the former grant."

He said that he had been requested to move the amendments of which Mr. Kennedy had given notice. He regretted very much that the hon'ble gentleman was unavoidably absent, and that his amendments should thereby be deprived of the support which his superior knowledge and authority on such questions would have lent to them. But as he (MR. COLVIN) had voted with the hon'ble member in the minority when the Bill was under consideration in Committee, he would endeavour, as far as he could, to supply his place, and explain the reasons which had led them to adopt what had been—hitherto at least—the losing side in this controversy. The principal reason which in their opinion made it unadvisable to leave the Certificate Act without the amendments which were now before the Council was this:—That to do so would cause great inconvenience and loss to persons who were now living under that law. A few words would, perhaps, be necessary to explain the nature of this loss and inconvenience. The Certificate Act, which was passed in 1860, provided, in the absence of any more complete powers of administration, for a partial and imperfect kind of administration of the estates of deceased persons. Its effect was to enable the holder of a certificate to collect debts which might be due to the estates of deceased persons, and it protected debtors who paid their debts to the holder of a certificate, but the Act settled nothing whatever as between the holder of the certificate and any rival claimants who might think themselves better entitled to succeed to an estate. Any disputes as to the right to succeed were left to be decided by civil suits. The Bill which was now under consideration, on the other hand, would give to any person who had once obtained letters of administration, not only a title against the debtors, but a conclusive title against all the world, which would not be open to question in a civil suit. It would put the administrator therefore into a far better position than the holder of a mere certificate, and the Bill expressly provided (in section 151) that, when letters of administration had been granted to any one, a certificate, if already issued, should be superseded. The Bill, therefore, when it came to be generally understood, would completely supersede and take the place of the Certificate Act in all places to which it might be extended.

Unfortunately this, which would be the result of passing the Bill that was now under consideration, might not be generally understood throughout the

country for some time to come. The legal effect of the certificate had never been anything more than he had explained, but in practice it had been permitted to carry a great deal more weight over the greater part of India than it was really entitled to. In the absence of any complete system of Probate and Administration, this limited and imperfect power of administration had been looked upon as carrying a title to a deceased person's estate. The High Court of Calcutta, for instance, had recently said that "as a matter of fact, certificates under Act XXVII, 1860, are, in four cases out of five, taken out simply as evidence of title to the estate of a deceased person, and though legally they are not any evidence of this, they are commonly accepted as such, even by Courts of Justice in the mufassal." MR. COLVIN could state from his own knowledge that the Act was used for precisely the same purposes in the North-Western Provinces. There was plenty of evidence to show that the same state of affairs existed in other parts of India, but he was unwilling to take up the time of the Council in proving what was not likely to be seriously contested. This being the practical working of the Act, it would probably be some time before people could be disabused of the idea that a certificate carried a title to the estate of a deceased person. If the Certificate-law were left with no material change, he thought people would be confirmed in that mistake, and would not suspect that any important change had taken place. Moreover, if the certificate procedure was allowed to remain, as it was now, very much cheaper than the procedure which was necessary for obtaining letters of administration, people would be invited and attracted to resort to it, and between the cheapness and the previous practice in this respect, people might for a long time go on taking out certificates which would be found, when too late, to be not worth the paper on which they were written. He thought it better to save the people from the loss and vexation which this misunderstanding would cause them by putting the certificate on the same footing as letters of administration, and not tempting litigants to resort to the wrong law by leaving to it the delusive attraction of greater cheapness.

Objection had been taken to the provisions which the amendment contained on the ground that to put certificates and letters of administration on the same footing in respect of cost might cause great hardship in the case of persons who succeeded to very large estates, which perhaps only included one or two small debts. For instance, if a man succeeded to landed property to the value of ten lákhs of rupees, and had to recover interest on a small investment of only rupees five hundred, the effect of the amendment would be to make him pay two per cent. on the total value of the estate—on the ten lákhs as well as on the rupees five hundred. MR. COLVIN did not deny that this would be oppressive and

unreasonable if there was no doubt about the claimant's title to the debt. But to meet cases where there was no such doubt, the law contained a provision, which he thought should be generally sufficient to obviate any hardship even in the extreme case supposed. Section 2 of the Certificate Act said that "no debtor of any deceased person shall be compelled to pay his debt without a certificate, unless the Court should be of opinion that the payment of the debt is withheld from fraudulent or vexatious motives, and not from any reasonable doubt as to the party entitled." It was evident from the preamble and the section which he had quoted, and from the whole tenor of the Act, that it was only intended to be used in cases in which reasonable doubt existed. If there was reasonable doubt, then, as to the title to part of the estate in the case which he had supposed, there would probably be doubt also as to whether the claimant was entitled to the whole estate. Anyhow, wherever the title was in question, the parties must resort ultimately to the administration law; either that, or a civil suit, was the only way in which the dispute could be finally determined, and there was no good in charging the applicant a fee, however small, for a useless certificate, in addition to the administration or institution-fee which he would be compelled to pay.

If it should be said that this argument pointed rather to the necessity of repealing than of amending the Certificate Act in the sense proposed, and that it would be better openly to rescind the law than to deprive it of its effect by increasing its cost, he was not prepared to dispute the justice of such an argument, but the question of repealing the Act was not before the Council; if it were, he would have preferred repealing it to adopting the present amendment. But he feared that if any proposal to rescind the Certificate Act were made at this stage, it would lead to prolonged enquiry and deliberation, and whilst those enquiries and deliberations were being carried on, the mischief which he desired to avoid would have been done. The people would have learned, at the cost of a good deal of time, money and useless litigation, that the Certificate Act had been virtually repealed wherever this Act came into operation, and the formal repeal, when sanctioned, would come too late to save them from the inconvenience and loss which he anticipated.

The Hon'ble MR. GRANT said that Mr. Kennedy's motion aimed at assimilating the method and equalising the cost of proceedings under the Certificate Act of 1860, and the Bill now before the Council. The question was considered by the Select Committee, and as he then demurred to Mr. Kennedy's suggestions, he wished very briefly to explain why, notwithstanding the strong reasons with which Mr. Colvin had been able to support them, he was unable to change his opinion.

In doing so, however, he had no desire to contest the force of the plea for probates, as conferring a complete representative title. On such a point the opinion of eminent lawyers, whose experience had not only acquainted them with the weak points in the present system, but had also suggested the best means of remedying them, must be accepted, not only with respect, but with gratitude, by all who desired amendment of what was admitted to be an anomalous and inconvenient state of things. On the other hand, it must be remembered that the hon'ble and learned author of the amendment had derived his knowledge of the case mainly from what he had observed in one of the most enlightened and advanced sections of the Empire, whilst this Council was bound to look to India as a whole—to the backward rural communities, which covered so large a part of the continent, as well as to the inhabitants of great cities.

The present Bill was one adapted, as would be seen from even a cursory perusal of its provisions, to meet all, or nearly all, the requirements of a somewhat advanced social condition. True, all these provisions need not be called into play unless they were specifically wanted, but they existed, and furnished a complete machinery for dealing with succession. The Certificate Act, on the other hand, was a simple measure to facilitate the collection of debts, and so to prevent the violent interruption of ordinary business relations on the death of an owner of property. It was easily understood by the people of the country and was popular among them—so much so, indeed, that its benefits had been somewhat abused, and on this abuse was founded the main argument for restricting its operation. As they knew, the people in many cases, and the judges in some cases, believed that a certificate conferred a representative title, and so the courts were set in motion to secure great advantages without payment of the corresponding stamp-duty. But even admitting this misconception to be more general than he believed it to be, surely its existence could not justify the trenchant remedy which the hon'ble gentleman proposed to apply. What he suggested was in effect, that a certificate to collect a debt, bearing perhaps a mere infinitesimal proportion to the whole property concerned, should be charged with stamp-duty on the entire value of that property. The result would be that, in many cases, it would not be worth while for the representatives of deceased persons to collect small debts at all. But Mr. Colvin had contested that position by referring to the provisions of section 2 of the Certificate Act. He said that, if there was unreasonable opposition to the collection of debts, the Court would compel payment even without a certificate, on the ground that the payment had been withheld from fraudulent and vexatious motives, and not from any reasonable doubt as to the party entitled to collect. That might well happen, if the opposition was

palpably made in bad faith. But, as the Council knew, the pleas raised in defence were often very ingenious and plausible, and it was not always possible to detect bad faith. But omitting, for the moment, all consideration of inconveniences in practice, he thought it must be admitted that the assimilation of the charges for establishing a good representative title, and for conferring a mere provisional right to collect debt, would be intrinsically inequitable and indefensible. The advantages given by a certificate might be overvalued by the Native public, but such misconceptions could not long co-exist with the spread of legal science and the increase of lawyers. Rather than try to remedy even an admitted abuse, by an attempt to bring about a forced equalisation of essentially unequal things, why should they not wait a little longer, and try the effect of the natural operation of time, and increasing knowledge of rights?

The representation of deceased persons was by no means the only branch of judicial procedure in which claimants in this country sought to grasp a substantial advantage, by means of a cheap and summary process provided for other purposes. For example, there had been numerous cases in which titles to property had been asserted and determined in suits for agricultural rents. The judgments of the Revenue Court in such cases would have no determining force, except for the mere purposes of the immediate suit; but they were, no doubt, often treated by all concerned as setting at rest the question of title. And yet it had never occurred to any one, so far as he was aware, to propose that in rent suits, involving questions of title, the full duty payable on the property concerned should be levied.

But, indeed, he would go further, and submit that the question was not one which, in its present form, could properly be discussed from a financial point of view. It might be very right and proper that all classes should pay a succession duty, which was now levied only on the property of Europeans, to whom the Succession Act applied, and of a few others. But, if so, the imposition of these duties should be considered as an independent question on its merits.

If the proposal before the Council was adopted, succession duty would certainly be levied on some Native estates, but not on all; and the distinguishing test would turn on the mere accidental question, whether the particular estate included debts to be collected, or interest to be realised on Government securities. Obviously, under such a system, the richest estates might escape altogether free, whilst the poorest were taxed. Therefore, even as a measure of financial reform, the motion before the Council would land them in even greater anomalies and inequalities than those which it purported to remove, and thus, from

whatever point of view it was considered, it seemed to him open to serious exception.

The Hon'ble MAHÁRÁJÁ JOTÍNDRA MOHAN TAGORE said he was inclined to support the view taken by the hon'ble member to his right (Mr. Grant). As he understood it, the present Bill was to be entirely of an optional nature, and he thought it had been judiciously decided to give this character to it in the first instance. If, however, the amendment moved by his hon'ble friend to his left (Mr. Colvin) be accepted, and the fees leviable under the Certificate Act be assimilated to those to be imposed under this Bill, not only the Certificate Act would virtually be rescinded, but the optional character of the present Bill would be necessarily destroyed, which he thought was not at all desirable. Every law which tended to give greater security to title and property, and prevented litigation was, in his humble opinion, of great advantage to the community, and such, he took it, was a law of probates and administration. In the interior of the country, however, people might not perhaps view the present Bill in this light at first, and if the fees under the Certificate Act be raised to the standard of those under the present Bill, it would no doubt be considered a great hardship by the people, for, as the hon'ble member to his right had justly observed, in many cases applications for certificates under Act XXVII of 1860 were made simply to enable a party to collect the debts of a deceased person, which debts might not be large, though the whole of his assets might come to a heavy amount, and under such circumstances it could not but be considered a hardship to be obliged to pay fees for the full amount of the assets. He felt sure that when by experience it would be found that the Probates and Administrations Act afforded additional security to title and prevented litigation, and as a consequence gave an increased value to land, the advantages of such an enactment would be at once patent, and he thought the people would take more kindly to it than if it were a compulsory measure, as it would be if the Certificate Act were in effect repealed in the way proposed.

After the lapse of some time the practical working of the Act would give the Government an opportunity, not only to make the necessary amendments (if any) in its details, but also to consider how far the optional character of the measure ought to be altered, and whether the Certificate Act ought or ought not to be repealed.

The Hon'ble MR. STOKES said that three propositions for further legislation had been on that day mentioned to the Council. One was the proposal to render probate compulsory outside the Lower Provinces and the towns of Madras and Bombay; another was Mr. Kennedy's amendments of Act XXVII of 1860; and a third was a total repeal of that Act. MR. STOKES was the last person

in the world to seek to restrain the liberty of the Legislative Council, but he ventured to think that the policy of these projects of law should first be settled by the Executive Council after consultation with all the Local Governments. This had not yet been done. As to the proposal to render probate compulsory, *that* was intimately connected with—was in fact suggested by—the proposal to extend the Hindú Wills Act, which had for some time been under the consideration of the Government of India. He believed the Act had worked satisfactorily. It provided securities, such as the requirement of writing, signature and attestation, for the due exercise by Hindús of that testamentary power which a long series of decisions had declared them to possess. It prohibited oral revocations of written wills. It prohibited nuncupative wills, except in case of soldiers and sailors on active service, and thus precluded much fraud and perjury. It prevented the creation of perpetuities, and by requiring all wills to be proved and deposited in Court for safe custody, rendered fraudulent alteration almost impossible. It imposed a salutary check on executors by requiring them to exhibit inventories and accounts of their testator's assets. It defined the character and powers of Hindú executors, and thus enabled them to sue for their testators, and in case of sale or mortgage to make title to their testator's estate. At the same time, it did not interfere with the Hindú law of inheritance.

But it must be admitted that in inserting the clause requiring probate of all wills of property exceeding rupees one thousand, the Select Committee had trenched on the province of the Executive. The Government of India had then, and had now, under consideration the expediency of extending the Hindú Wills Act to Provinces other than Lower Bengal. In last September we asked the Lieutenant-Governor of Bengal for a report on the working of the Hindú Wills Act in that Province; and as soon as His Honour's reply was received, the question would, MR. STOKES trusted, be finally and satisfactorily dealt with.

As to Mr. Kennedy's amendments, those also had been, and indeed were still, under the consideration of the Executive, and the Local Governments would be consulted upon them. He might, however, say that the arguments adduced by Mr. Kennedy, and repeated to-day by Mr. Colvin, had hitherto failed to convince the Government of India. The Government were inclined to think, first, that in order to induce people to resort to the provisions of the Bill rather than to the Succession Act, where difficulties arose in connection with Native successions, it was not necessary to make certificates as expensive as probate or letters of administration, and that in other cases there was nothing to justify our using any pressure. Secondly, they thought that, as an effort towards establishing equality between all classes in the matter of

succession duties, Mr. Kennedy's proposal was based upon no reasonable principle, inasmuch as it made the question whether a Native estate was to pay the duty or not depend on the accidental circumstance of the assets including or not including debts. If a Native died leaving property worth lákhs of rupees, but no debt due to him and recoverable only by legal proceedings, the estate would, under Mr. Kennedy's scheme, get off scot-free; but if the Native happened to leave a debt of one hundred rupees due from a troublesome debtor, or if he happened to leave five hundred rupees invested in Government paper, duty would have to be paid on the whole estate, unless indeed the representatives chose to forego their claim and bear the loss, as they doubtless would when the debt or paper was less in amount than the duty. Thirdly, the Government considered that if it was thought desirable as a matter of financial administration to put all classes on an equality as regarded succession duties, such duties should be imposed on some principle which would make them fall equally on all classes of Native successions, and should not be introduced by a side-wind which would cause them to fall capriciously on some classes of successions and not on others. Fourthly, they held it unreasonable to charge for a certificate which gave a title only to a part, perhaps an insignificant part, of the assets, as much as for probate or letters of administration, which gave a title to the whole, and that the circumstance that ignorant people attributed to the certificate the force of probate or letters of administration, was no answer to this. Fifthly, the effect of making Mr. Kennedy's amendment would be to cause Act XXVII of 1860 to be disused everywhere, in other words, virtually to repeal it. But the repeal of that Act (which MR. STOKES admitted fully deserved all the bad words that had been said about it) should be made honestly and openly, expressly and directly, after full discussion with the Local Governments and notice of our intention to the Secretary of State.

MR. STOKES fully agreed with Mr. Colvin, that wherever this Bill came into force, Act XXVII of 1860 would become of little use, and he might mention that, as soon as the present Bill was passed, the Home Department would consult the Local Governments as to the expediency of repealing the Act in question.

For the present, MR. STOKES thought the Council would do well to pass the Bill merely with the amendments which he had already proposed and those which he was about to bring forward. The Bill had had a sufficient period of gestation—eighteen months—it was a purely permissive measure, and could therefore cause no hardship. If after it came into force any one obtained a certificate under the Certificate Act and paid two per cent. on the amount of the debt, he would, under section 152, get back his money in case he afterwards took out admin-

istration or probate. No such loss or vexation as Mr. Colvin anticipated would therefore occur. On the other hand, the Bill would for the first time provide means of conferring upon the bulk of the Hindú, Muhammadan and Buddhistic population of this empire complete and conclusive titles as representatives of deceased persons, and the result would ultimately be, first, a diminution in litigation, and, secondly, a vast increase in the selling or mortgaging value of property all over British India.

The Hon'ble MR. COLVIN, prior to the President putting the motion, said that he had begun by saying that he was advocating what had hitherto been a losing side, and it was likely, he feared, to remain a losing side. Still one or two arguments had been used, which he would like to notice. In the first place, it had been said by the Hon'ble Mr. Grant, that the Council must not look only to the practice followed, and the opinions entertained, in the most enlightened parts of the country, namely, the Presidency-towns, but also to the distant and more backward Provinces. With reference to this, he would remark that the whole object of the amendment was to remedy the inconvenience and loss which was likely to accrue to people inhabiting the backward and distant parts of the country. Where the law was correctly understood, no difficulty would arise; but where people did not understand the true value of a certificate, they would waste their time and money in taking out certificates which would be of no use to them. Again, his hon'ble friend had said, that the fact that the Certificate Act might have been abused did not furnish sufficient ground to justify an amendment of the kind proposed. MR. COLVIN was not prepared to say that the Certificate Act had been abused; all that he had said or intended to say was that, rightly or wrongly, the Act had been used to furnish evidence of title, in the manner which he had described. What the Council had to deal with was the actual operation of the law, not the way in which it should have operated if it had been correctly interpreted; with the facts, not with the theory of the law. It was to obviate the mischief which might be caused by a sudden and imperfectly understood change in the practical working of the law, not to put a stop to any abuse of it, that the amendment had been introduced. Nor was he prepared to admit that the purport of the amendment was a very sweeping one. His hon'ble friend the Mahárájá (he thought) had said that it was so, and that it would have the effect of repealing the Certificate Act. In reply to that, he (MR. COLVIN) would say that it was not the amendment which would repeal the Certificate Act, but the Bill before the Council, if it was passed; because, if a person applied for a certificate thereafter in any part of the country where the Bill had become law, his opponent had only to apply for letters of administration, and those letters of administration, under section 151 of the Bill, would supersede the certificate and render it useless. It was

evident, therefore, that all questions of title in disputed successions must be determined thenceforward under the Administration Law and not under the Certificate Act.

The Hon'ble Mr. Grant had also spoken of the impropriety of using the amendment for the purpose of imposing a "succession duty," but he (MR. COLVIN) had not put forward its financial effects as one of its recommendations, because it did not appear to him that they would furnish any argument in its favour. If a succession duty should ever be required, which he had no reason to suppose was the case now, he thought that its imposition should be set about in a very different way, and that the Bill which was now before the Council would be of very little use for that purpose. There were one or two things, however, to be said on the other side of the argument, even looking at the question from a "succession duty" point of view. In the first place, whatever objections might be urged against levying a partial and unequal succession duty by charging two per cent. on voluntary applications for letters of administration, those objections would apply equally to the unequal and partial succession duty which was now being levied from all classes in the country, except Hindús and Muhammadans, and in certain places, that is to say, in the Presidency-towns, from them also. He did not think there was any ground on which the levy of the duty referred to in this shape could be defended which would not also serve to justify the fee on Probates and Letters of Administration under the Bill before the Council. Again, he would point out that, although no succession duty under that name was now paid in cases of disputed inheritance, yet people did actually pay, and the State receive, sums which probably amounted to more than two per cent. on the value of disputed estates (which would be the rate leviable under the amendment), because such disputes, as things stood, could only be determined by a civil suit, and it was very questionable whether the cost of a civil suit would not be much heavier to the parties concerned in it than any fees which would be chargeable for administration.

The Motion was put and negatived.

The Hon'ble MR. STOKES moved the following amendments :—

"That in section 33, line 7, before 'lunatic,' the words 'minor or' be inserted, and that, for the last seven words, the words 'minor or lunatic, until he attains majority or becomes of sound mind, as the case may be,' be substituted.

"That in section 93, line 4, after 'become,' the words 'in the absence of any direction to the contrary in the will or grant of letters of administration,' be inserted.

"That in section 107, paragraph 2, after 'and,' the words 'in the absence of any direction to the contrary in the will,' be inserted.

"That in section 124, line 5, after 'legatee,' the words '(if any)' be inserted.

"That to section 131, the following words be added:—'or unless the will contains a direction to the contrary.'

"That in chapter XIV, before section 148, the following section shall be inserted:—

"'148. In chapters VIII, IX, X and XII of this Act the provisions as to an executor shall apply also to an administrator with the will annexed.'

and

"That the numbers of the subsequent sections be altered accordingly."

He said that these amendments required scarcely any explanation. The first would extend to minors the section as to administration for the use and benefit of lunatics. The others were mere corrections of certain oversights due to the framers of the Indian Succession Act, from which this Bill had for the most part been copied.

The Motion was put and agreed to.

The Hon'ble MR. STOKES then moved that the Bill as amended be passed.

The Motion was put and agreed to.

DISTRICT DELEGATES BILL.

The Hon'ble MR. STOKES also moved that the further Report of the Select Committee on the Bill to make further provision for the grant of probates of wills and letters of administration in non-contentious cases, be taken into consideration. No substantial change had been made.

The Motion was put and agreed to.

The Hon'ble MR. STOKES then moved that the Bill as amended be passed.

The Motion was put and agreed to.

MADRAS PORT-DUES BILL.

The Hon'ble MR. GIBBS moved that the Report of the Select Committee on the Bill to enhance the rate of Port-dues leviable at Madras, be taken into consideration. He presented the Report at the last meeting of the Council and had then observed that there was only one alteration which had been suggested by the Madras Government, but to which the Select Committee had not assented. The Madras Government suggested that, in the second section, paragraph (2), clause 3, the words "not exceeding eight annas per ton" should be altered to "six annas," which they considered would cover all charges. But the Select Committee thought it would be better to leave the

maximum rate at eight annas, as there might be a doubt whether a rate of six annas per ton would cover the charges; and it was a mere matter of administrative action to restrict the power of levying the due to six annas per ton. That was the only observation he had to make.

The Motion was put and agreed to.

The Hon'ble MR. GIBBS also moved that the Bill as amended be passed.

The Motion was put and agreed to.

PETROLEUM BILL.

The Hon'ble MR. STOKES presented the Report of the Select Committee on the Bill to regulate the importation, possession and transport of Petroleum and other substances of a like nature.

FORT WILLIAM MAGISTRATES BILL.

The Hon'ble MR. REYNOLDS introduced the Bill to provide for the better government of Fort William and moved that it be referred to a Select Committee consisting of the Hon'ble Mr. Stokes, Sir D. M. Stewart and Mr. Paul and the Mover.

The Motion was put and agreed to.

The Hon'ble MR. REYNOLDS also moved that the Bill be published in the *Calcutta Gazette* in English and in such other languages as the Local Government might think fit.

The Motion was put and agreed to.

The Council adjourned to Friday, the 21st January, 1881.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

CALCUTTA;
The 14th January, 1881.

Government Central Press.—No. 373 L D —21-1-81 —250.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 21st January, 1881.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.G., P.C., G.M.S.I., *presiding.*

His Excellency the Commander-in-Chief, G.C.B., G.C.S.I., C.I.E.

The Hon'ble Whitley Stokes, C.S.I., C.I.E.

The Hon'ble Rivers Thompson, C.S.I.

The Hon'ble J. Gibbs, C.S.I.

Lieutenant-General the Hon'ble Sir D. M. Stewart, G.C.B.

Major the Hon'ble E. Baring, R.A., C.S.I.

The Hon'ble Mahárájá Jotíndra Mohan Tagore, C.S.I.

The Hon'ble C. Grant.

The Hon'ble J. Pitt Kennedy.

The Hon'ble G. C. Paul, C.I.E.

The Hon'ble H. J. Reynolds.

The Hon'ble G. F. Mewburn.

BENGAL CESS ACT AMENDMENT BILL.

The Hon'ble MR. STOKES presented the Report of the Select Committee on the Bill to amend Bengal Act No. IX of 1880 (the Cess Act, 1880).

The Hon'ble MR. STOKES also moved that the Report be taken into consideration. No change had been made in the Bill as introduced, and the Committee recommended that it should be passed.

The Motion was put and agreed to.

The Hon'ble MR. STOKES then moved that the Bill be passed.

The Motion was put and agreed to.

INSOLVENT DEBTORS ACT AMENDMENT BILL.

The Hon'ble MR. KENNEDY moved for leave to introduce a Bill for the amendment of the law relating to Insolvent Debtors in India. He said that, in doing so, his suggestions were merely as to a few matters of detail which had been, in the practical working of the Insolvent Act, occasionally found inconve-

nient, possibly working injustice. The Insolvent Act in India was passed on the lines of the Insolvent Act of George IV, with a few provisions introduced from the Bankruptcy Act of that period, and it had not to any considerable extent followed the Insolvent and Bankruptcy Laws of England in the changes which have since been made. No doubt these changes had in many respects been found not advantageous, and, as the hon'ble members were all aware, at present, in England, a large and comprehensive reform of the Bankrupt Law seemed to be contemplated. But his propositions were very much more modest and merely applied to special points which he considered would tend to carry out the great principle of the Bankruptcy and Insolvency Laws, that is to say, providing for an equal distribution of the assets of the insolvent amongst his creditors.

The first change, he would suggest, was with regard to the operation of attachments and other processes in execution upon the property of the insolvents. As the law in England stood when these Acts were passed, attachments or processes in execution so far divested the property from the judgment-debtor that his subsequent bankruptcy or insolvency did not vest the attached property in the assignee, and thus any creditor might not unfrequently or improbably sweep away almost the entire assets of the insolvent. In England alterations in the law had been made which left the attached property subject to be distributed, at least until sale of the property and payment over of the produce of the sale. The Procedure Code in this country also seemed to have recognized the propriety of that equal distribution, and it was to carry out that principle that the first of the suggestions had been made. It was that attachment and execution should not divest the property from the debtor so as to prevent it vesting in the Official Assignee or the receiver under the Procedure Code, until the property had actually been sold, and the produce distributed.

A further provision had caused some little difficulty, inasmuch as, at the present moment, there was pending before the Appeal Court a question respecting it. From the earliest period, almost, of the Bankruptcy Law, provision was made by which persons who permitted traders to remain in the apparent possession of property which did not belong to them, but which did belong to the persons so permitting it to be held, those persons so permitting traders to have a false appearance of credit, caused by the property remaining in their hands, in case of insolvency, lost all power of retaining any right in the property, and it vested in the assignee. That provision had been continued in England from the Act of James I down to that of 1869—the last Bankruptcy Act passed in that country. It had been felt that for many reasons—not only on the ground of

unfairness to the general creditors having that appearance of credit allowed, but also because, in the case of insolvency, there was so much opportunity of setting up fraudulent deeds, making things safe as it were in the event of bankruptcy or insolvency—it had been felt for many reasons to be expedient to put a stop to such contrivances. But it had lately been decided in the Court of Appeal in England, that if one member of a firm, or several members of it not extending to the whole, became bankrupt, this provision did not come into operation, and there was a singularly strong reason for so holding, because, if the property were to pass to the assignee from any one insolvent, it would be in the first instance applied to the payment of his separate creditors and not to those of the firm in general, which would be a very curious result. In this country, it so happened, at least in the case of European firms, that a considerable number of partners might be in this country, but it rarely happened that all were here, and therefore, in the case of insolvency here, the partner absent in Europe not being in a position to be declared insolvent, that particular provision would rarely if ever come into operation. It certainly did seem that so far as property was left in the hands of a firm practically insolvent, it might be applied in payment of joint creditors of the entire firm. This would be carrying out the original principle in enabling the general creditors to receive the benefit of property which was ostensibly that of the bankrupt, and yet prevent that inconvenient result to which he (MR. KENNEDY) had called attention. The object in such cases would be that the property should be applied in payment, not of the debts of the individual partners, but only so far as was necessary in realising the joint debts due from the firm.

Further, in the recent Procedure Code a provision was made for declaring a person insolvent in the Mufassal Courts. In the great mass of cases, persons who would be so declared insolvent, would be persons practically resident or carrying on business within the jurisdiction of the Court where the person declared himself insolvent. But it did so happen that a very large portion of the trade of Calcutta was carried on by various Native merchants, who were not resident here, but who carried on business through gumáshtas or managers, and it might well happen that it would not be long before fraudulently inclined traders would discover that a friendly creditor might proceed to take steps in insolvency in the Mufassal Courts, whilst the really large and important creditors were in Calcutta, and would have but little chance or opportunity of bringing forward their claims or interfering at all in the matter. It would be difficult for them to send qualified agents down to out-of-the-way parts of the country who would be able to look after their interests.

His suggestion was that the Insolvency Courts, where there were creditors in considerable numbers in the Presidency-towns, should have the opportunity and power, if they thought fit, to remove the Mufassal insolvency proceedings into the Presidency Insolvency Court.

MR. KENNEDY had yet again another suggestion:—there was an Act of the year 1841, which made provision for dealing with unclaimed dividends. In the aggregate these amounted to very considerable sums; but in individual cases, they were often extremely small and hardly worth any person's while to take the trouble of making applications for recovery. For instance, a man with a debt of rupees one hundred, when there was a declaration of a dividend of one anna in the rupee, would hardly in general think it worth his trouble to realise the amount; the dividend would be unclaimed, and, after a certain lapse of time, the intention was that it should be redistributed amongst the other creditors of the estate. However, the Act of 1841 was so complex, that it had practically become inoperative, and his (MR. KENNEDY'S) idea was to introduce a clause which would remedy the difficulty which had been felt in working out that particular provision. These were the general suggestions which he deemed necessary to lay before the Council.

The Hon'ble MR. PAUL, in supporting the motion for the introduction of the Bill, said that he desired to record his most hearty approval of the suggestions which had fallen from his hon'ble friend and colleague. The Insolvent Act had not been changed since 1849, and the Hon'ble Members were aware that the nature of business had altogether changed since the Act had been introduced, necessitating a great many alterations in the working of the Act. That, however, was a question which his hon'ble colleague did not profess to discuss this day; he only desired to amend the Act in a few important points. The clause, which was known as the order and disposition clause, had been found practically ineffectual in cases relating to absent partners, and the mischief against which the clause was directed was allowed to recur without the means of putting a stop to it, and it was for this reason that the mover had devised a clause to remedy the evil. As the law now stood, this order and disposition clause would have no effect whatever in the case of absent partners; and, while on the one hand his learned friend proposed to alter the law to meet some portion of the mischief referred to, he very properly guarded it by a qualification that the altered clause should not extend to the separate debts of the insolvent partners, but only to the partnership liabilities. In point of fact, no possible objection could be taken to this course. The provision was a most salutary one, and would be of great utility to the mercantile interests of Bengal. With regard to the other points, they were so

obvious in themselves that MR. PAUL did not consider it necessary to touch upon them; he only wished to endorse entirely the views put forth by his friend, and on the whole desired to support them.

The Hon'ble MR. STOKES said that he was sure the Council would gladly give leave to introduce a Bill to amend defects which the long practical experience of his hon'ble and learned friend Mr. Kennedy had enabled him to point out. MR. STOKES might add that the Secretary of State had recently called the attention of the Government of India to section 82 of the Insolvent Act, which, while imposing upon the Indian Government the duty of advertising in the *London Gazette* the notices of insolvency published in the official Gazettes in India, seemed to make no provision for the recovery from the estates of the insolvents of the costs of so advertising them.

These advertisements, it seemed, were inserted in the *London Gazette*, in the year 1878-79, at a charge against the India Office of no less than £425. It appeared to Lord Hartington that the charge was one which ought clearly to be defrayed by the estates to which the notices related. He therefore requested that the matter might receive the early consideration of the Government of India in communication with the Judges of the several High Courts, and that, if necessary, recourse might be had to legislation so as to ensure (so far as might be possible) the recovery from every estate of all costs, whether incurred in England or in India, attendant on the insolvency. But Mr. Miller, the Calcutta Official Assignee in Insolvency, had questioned the practicability of the Secretary of State's suggestion, inasmuch as in India, whatever the case might be at home, the majority of insolvency estates were wholly without assets after defraying the necessary court-fees, and Mr. Miller therefore thought the most convenient plan would be to repeal section 82 of the Insolvent Act, and require the publication in the *London Gazette* of those insolvencies only in which there were creditors in England, and that the cost of the publication should be defrayed out of the fees paid into Court by those estates. It seemed to MR. STOKES that the Secretary of State's suggestion and Mr. Miller's proposal might be considered in connection with the present Bill.

The PRESIDENT thought that the matter might fitly be brought before the Select Committee, to which, no doubt, the Bill would be referred.

The Hon'ble MR. GIBBS said, that he had had the honour of presiding for more than five years over the Insolvent Court at Bombay, and he was consequently able to testify to what his learned colleague had said of the difficulties of working the Insolvency Act, which was framed so many years ago. It would be in the recollection of some of the Council that Sir Fitz James Stephen, when

Law Member, introduced a Bill to amend the insolvency law. That Bill received a great amount of consideration from the different High Courts, but was dropped in consequence of the subject being a very difficult one, and considered too technical for the Mufassal. He had only just heard the suggestions for the amendment of the law, but, generally, he thought, the Act was capable of many improvements especially as regarded the last point which had been mentioned. Large sums of money remained invested as unclaimed dividends, and it was found that they were not claimed, simply to avoid the expense and trouble of applying for the recovery of small sums. These general observations were merely made to show why a measure of this kind should be introduced and carefully considered. Whether any other points should be added in Select Committee, he could not of course say; but he thought it probable that one or two other matters might be introduced to improve the administration of that particular branch of the law in India.

The Motion was put and agreed to.

NEGOTIABLE INSTRUMENTS BILL.

The Hon'ble MR. STOKES presented the fourth Report of the Select Committee on the Bill to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques. The report of the Indian Law Commissioners, 1879, had been duly communicated to the Select Committee. They had carefully considered so much of it as related to the present Bill, and, in compliance with the wish of the Secretary of State for India, as expressed in his despatch (Legislative), No. 37, dated 7th October, 1880, this fourth report was now submitted. As the report would be published with the Bill in the *Gazette of India*, MR. STOKES would only remark that they had adopted most of the recommendations of the Law Commission, not only as to the substance of the Bill, but also as to its arrangement and wording. The Committee recommended that the Bill as now revised be passed. It had been more than thirteen years before the Council of the Governor General; it had been redrawn, copiously criticised and repeatedly revised; and without the experience derived from its actual operation, it was not likely to be further improved. But it should be published in the Gazettes, and, according to the orders of the Secretary of State, it must, before being passed, be sent to the Local Governments, translated into the vernaculars and submitted to him with this report.

The Council adjourned to Friday, the 28th January, 1881.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

CALCUTTA;
The 21st January, 1881.

Govt. Central Press.—No. 399 L. D.—26-1-81.—250.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 28th January, 1881.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.G., P.C., G.M.S.I., *presiding.*
His Honour the Lieutenant-Governor of Bengal, K.C.S.I.
His Excellency the Commander-in-Chief, G.C.B., G.C.S.I, C.I.E.
The Hon'ble Whitley Stokes, C.S.I., C.I.E.
The Hon'ble Rivers Thompson, C.S.I.
The Hon'ble J. Gibbs, C.S.I.
Lieutenant-General the Hon'ble Sir D. M. Stewart, G.C.B.
Major the Hon'ble E. Baring, R.A., C.S.I.
The Hon'ble Mahárájá Jotíndra Mohan Tagore, C.S.I.
The Hon'ble C. Grant.
The Hon'ble J. Pitt Kennedy.
The Hon'ble H. J. Reynolds.
The Hon'ble G. F. Mewburn.
The Hon'ble B. W. Colvin.

INSOLVENT DEBTORS ACT AMENDMENT BILL.

The Hon'ble MR. KENNEDY introduced the Bill for the amendment of the law relating to Insolvent Debtors in India, and moved that it be referred to a Select Committee consisting of the Hon'ble Messrs. Stokes, Gibbs, Paul, Mewburn and Colvin and the Mover. He said that, when he had the honour of asking the Council for leave to bring in the Bill, he mentioned the motives which induced him to lay the matter before the Council, and it was hardly necessary for him, after the lapse of so short an interval since the last meeting of the Council, to repeat what he had then said. He might, however, mention that the Chief Justice of the North-Western Provinces had written to him suggesting some other provisions; these were matters which would properly come before the Committee when they were considering the Bill in its present form, and he might add that he thought it would probably be wise to add to the

Committee the name of the Hon'ble Mr. Mewburn as the representative of the commercial community.

The Motion was put and agreed to.

The Hon'ble MR. KENNEDY also moved that the Bill be published in the local official Gazettes in English and in such other languages as the Local Government might think fit.

The Motion was put and agreed to.

The Council adjourned to Friday, the 4th February, 1881.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

CALCUTTA;
The 28th January, 1881.

Government Central Press.—No. 418 L. D.—31-1-81.—250

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 4th February, 1881.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.G., P.C., G.M.S.I., *presiding.*

His Honour the Lieutenant-Governor of Bengal, K.C.S.I.

His Excellency the Commander-in-Chief, G.C.B., G.C.S.I., C.I.E.

The Hon'ble Whitley Stokes, C.S.I., C.I.E.

The Hon'ble Rivers Thompson, C.S.I.

The Hon'ble J. Gibbs, C.S.I.

Major the Hon'ble E. Baring, R.A., C.S.I.

The Hon'ble Mahárájá Jotíndra Mohan Tagore, C.S.I.

The Hon'ble C. Grant.

The Hon'ble J. Pitt Kennedy.

The Hon'ble G. C. Paul, C.I.E.

The Hon'ble H. J. Reynolds.

The Hon'ble G. F. Mewburn.

The Hon'ble B. W. Colvin.

PETROLEUM BILL.

The Hon'ble MR. STOKES moved that the Report of the Select Committee on the Bill to regulate the importation, possession and transport of petroleum and other substances of a like nature be taken into consideration. He said that, in accordance with the opinion now expressed by the Government of Bengal, the Committee had done away with the distinction between first and second class petroleum. This distinction appeared to them unnecessary, and its abolition would much simplify the measure by reducing the classes of petroleum to be dealt with to two, as in England, namely, dangerous petroleum and ordinary petroleum. The measure might, no doubt, have been simplified still more by wholly prohibiting the importation of dangerous petroleum. But it appeared that there were certain useful purposes—such as making air-gas and cleansing cloths in dye-works—for which that class of oil was necessary.

The flashing point of dangerous petroleum, as originally fixed in accordance with the recommendation of the Bengal Committee at 83° F. by Abel's test,

had been objected to in many quarters as unnecessarily and inconveniently high. The Lieutenant-Governor of Bengal now proposed to reduce it to 78°; and on fully considering the papers submitted to the Select Committee, they proposed to reduce it even lower. There could be no doubt that the circumstance that the temperature of the air in most parts of India was throughout a great portion of the year higher than that which prevailed in England would, all other things being equal, make a petroleum flashing at a temperature between 70° and 80° F. more dangerous here than in England; but against this must be set off the greater openness and airiness of Indian buildings and the comparative absence of carpets, curtains and other things likely to catch fire. Moreover, he understood that into India the oil was always imported in tins and tightly closed cases, from which there was little risk of leakage, and that this was far safer than the practice of importing the oil in barrels, which prevailed in the English trade.

The Select Committee had accordingly fixed the flashing point of dangerous petroleum at 73° F. by Abel's test, equal to 100° F. by the old test.

The Committee had made some other amendments in the Bill, with a view to relaxing in certain particulars the restrictions it imposed; thus, in order to avoid the delay to which ships bringing petroleum to our ports might have been subjected if the samples furnished had to be tested by the Government Analyst before the petroleum was landed, they had altered the wording of the Bill so as to allow of the petroleum being landed as soon as the samples were delivered. They thought that the control which the Bill gave over the petroleum when landed would be sufficient to secure the object in view.

Again, the Committee had confined the provision of the Bill which required petroleum to be kept in indelibly marked vessels to *dangerous* petroleum, and they had reduced the maximum penalty for illegally importing, possessing or transporting petroleum from three months' imprisonment and one thousand rupees fine, to one month's imprisonment and five hundred rupees fine.

The other amendments made in the Bill were specified in the report and were too unimportant to require mention.

The Motion was put and agreed to.

The Hon'ble Mr. Stokes also moved that the Bill as amended be passed. Thanks to the suggestions made by the Local Governments and the Chambers of Commerce, the Bill was now, he thought, likely to prove a useful and practical measure. The importation of petroleum into India had, he was informed, grown from 750,000 gallons in 1875-76 to nearly seven million gallons in

1879-80. There need now be no fear of the Bill strangling this vast and useful trade—a trade that not only supplied a want of the Native population, but allowed the export of a large quantity of cocoanut and other vegetable oils, which would otherwise have been used for lighting. He had only to add that, to guard against the possibility of hardship to holders or consignees of dangerous petroleum, the Bill had been amended so that it would not come into force till 1st July, 1881.

The Motion was put and agreed to.

NORTH-WESTERN PROVINCES RENT ACT, 1873, AMENDMENT BILL.

The Hon'ble MR. COLVIN presented the further Report of the Select Committee on the Bill to amend the North-Western Provinces Rent Act, 1873.

The Hon'ble MR. COLVIN asked leave to postpone the Motion that the further Report be taken into consideration and the Motion that the Bill be passed.

Leave was granted.

RECORDING EVIDENCE (HIGH COURT) BILL.

The Hon'ble MR. KENNEDY moved for leave to introduce a Bill to provide for recording evidence taken by the High Courts in the exercise of their original civil jurisdiction. He said that, as Hon'ble members were aware, the decisions of the High Courts, as well as those of most other Courts in this country, were subject to appeal, not only in respect of matters of law, but also in respect to the decision in regard to matters of fact. There had been, perhaps, some difference of opinion as to the expediency of allowing such appeals, but that was too wide a question for the Council to concern itself with at present. But, for the purpose of making appeals on matters of fact possible, it was necessary for some provision to be made for the due record of the evidence upon which such questions were decided. Well, singularly enough, as far as MR. KENNEDY could discover, although in the Mufassal Courts there was very ample provision made for this purpose, with respect to the High Courts there was no such provision. In the High Court of Calcutta, and he believed in the High Court of Madras also, a practice which seemed as good as any that could be devised had for many years subsisted. In Calcutta, at any rate, he could say that it had for many years been invariably followed; that was to say, an officer of the Court, generally the Registrar, took down from the mouth of the witness a record of the evidence which he delivered, and that remained as the

record on which the decision of the Judge in the Court below could be considered in a superior, that is, the Appellate, Court.

However, as far as he could discover, there was no legal or binding sanction for the practice, and in consequence once or twice one or two of the Judges had disapproved of it, and adopted the course of recording evidence on their own behalf, not permitting the officer of the Court to take a note; and experience in those cases had shown that there was grave inconvenience. Mr. Justice Markby for a short time tried it, but soon gave it up. In fact, there was an indictment for perjury assigned upon evidence which had been taken before him, and there was some difficulty about proving the precise language of the witness alleged to have been perjured, and an acquittal was the consequence. But there was not only the difficulty of proving the statement in cases of indictments for perjury, but there were other inconveniences which arose where the Judge himself was the sole person who recorded the evidence. It was hardly possible for the Judge to pay the same attention to the demeanour of the witness in the same manner as he could do if he had only taken notes of the substance of the evidence given; and it had also the effect, where this practice had been tried, of causing considerable delay. And, in addition to that, the parties or their advisers had not the same power of seeing whether the person who recorded the evidence might not have made some mistake in taking it down. One could not very well ask the Judge what he had taken down in the same manner as he could ask an officer of the Court.

MR. KENNEDY believed it was the unanimous opinion of the profession that the practice introduced here by one of the Judges was not conducive, at any rate, to the rapid hearing of cases, and possibly not to their correct hearing and the due recording of the evidence. It was for these reasons that MR. KENNEDY asked for leave to bring in a Bill which would give legal sanction to the custom and the practice which hitherto prevailed in Madras and Calcutta. He understood from the Hon'ble Mr. Gibbs that a different practice had prevailed in Bombay, and it might therefore be necessary to make some arrangement by which that practice would not be disturbed if it had not been found to be inconvenient.

The Hon'ble MR. PAUL said that, in his opinion, the proposed change in the existing law would be highly beneficial to the administration of justice. The grave inconvenience of subjecting the Judge, who had himself recorded the evidence, to examination and cross-examination in a trial for perjury before the

High Court would be avoided, and other practical benefits would be ensured. On these grounds he supported the motion for leave to introduce the Bill.

The Motion was put and agreed to.

The Council adjourned to Friday, the 11th February, 1881.

D. FITZPATRICK,

CALCUTTA; *The 4th February, 1881.* } *Secretary to the Government of India, Legislative Department.*

C. H. L.

Govt. Central Press.—No 450 L. D. 11-2-81.—250.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 18th February, 1881.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.G., G.M.S.I., G.M.I.E., *presiding.*

His Excellency the Commander-in-Chief, G.C.B., G.C.S I., C.I.E.

The Hon'ble Whitley Stokes, C.S.I., C.I.E.

The Hon'ble Rivers Thompson, C.S.I.

The Hon'ble J. Gibbs, C.S.I.

Lieutenant-General the Hon'ble Sir D. M. Stewart, G.C.B.

Major the Hon'ble E. Baring, R.A., C.S.I.

The Hon'ble C. Grant.

The Hon'ble G. C. Paul, C.I.E.

The Hon'ble H. J. Reynolds.

The Hon'ble G. F. Mewburn.

The Hon'ble B. W. Colvin.

The Hon'ble Mahárájá Jotíndra Mohan Tagore, C.S.I.

ADMINISTRATOR GENERAL'S ACT, 1874, AMENDMENT BILL.

The Hon'ble MR. STOKES presented the Report of the Select Committee on the Bill to exempt Pársís from certain provisions of the Administrator General's Act, 1874.

RECORDING EVIDENCE (HIGH COURT) BILL.

The Hon'ble MR. STOKES, in the absence of the Hon'ble Mr. Kennedy, introduced the Bill to provide for recording evidence taken by the High Courts in the exercise of their original civil jurisdiction, and moved that it be referred to a Select Committee consisting of the Hon'ble Messrs. Gibbs, Kennedy and Paul and the Mover. He said that he had been requested by his hon'ble and learned friend Mr. Kennedy to introduce the Bill. He (MR. STOKES) felt two regrets in doing so—one, that Mr. Kennedy was unavoidably absent, and that the Council was thus deprived of the further explanation of the provisions of the Bill which Mr. Kennedy would doubtless have given: the other was that the Bill

had apparently been necessitated by the abstention of the High Court at Fort William from exercising the power to make rules as to taking evidence which the legislature had conferred upon the Court by section 633 of the new Code of Civil Procedure, and which was, of course, intended to be exercised. MR. STOKES said "apparently", for he presumed that the learned Chief Justice had been moved to make the rules, and had intentionally omitted to make them.

MR. STOKES had nothing to add to the explanation given by Mr. Kennedy on moving for leave to bring in the Bill. But he thought the Bill required two slight amendments—one to shew clearly that it applied only to High Courts for the time being established under the 24th & 25th of Victoria, chapter 104, and not to every "High Court" as defined by the General Clauses Act, I of 1868; the other providing that the proposed Act should be only a temporary measure, ceasing to operate in any Court as soon as a rule was made by that Court under section 633 of the Code.

In conclusion, MR. STOKES was sure that he might say, on behalf of his hon'ble friend, that there was no intention to hurry the Bill through the Council, and that any remarks which the High Courts concerned might see fit to make would be received with deference and considered with care.

The Motion was put and agreed to.

The Hon'ble MR. STOKES also moved that the Bill be published in the *Fort St. George Gazette*, the *Bombay Government Gazette*, the *Calcutta Gazette* and the *Government Gazette, North-Western Provinces and Oudh*, in English and in such other languages as the Local Governments might think fit.

The Motion was put and agreed to.

MADRAS CORONER'S JURISDICTION BILL.

The Hon'ble MR. STOKES presented the Report of the Select Committee on the Bill to empower the Government of Madras to alter the local limits of the Coroner's Jurisdiction, and for other purposes.

EXEMPTION FROM MUNICIPAL TAXATION BILL.

The Hon'ble MR. COLVIN presented the Report of the Select Committee on the Bill to exempt certain persons and property from Municipal taxation.

MERCHANT SHIPPING BILL.

The Hon'ble MR. STOKES moved for leave to introduce a Bill to amend the law relating to Merchant Shipping. He said that the object of the Bill was to consolidate the Indian Merchant Shipping Act, IV of 1875, and the sections of

Act XIII of 1878 by which it had been amended, and to introduce in it the provisions constituting chapters VII and VIII of the Indian Merchant Shipping Bill of 1879, which, with the omission of those chapters, was subsequently passed as Act VII of 1880.

The objects of the provisions which were omitted from Act VII of 1880 were, first, in compliance with the desire of the Secretary of State, and with the view of protecting lascars and other oriental seamen when serving on board a European ship, to authorize the appointment of an officer called a "Port-inspector," to be entrusted with the duty, among others, of enquiring into any complaints which might be made on the arrival of a ship in port, by any of the crew against the master or any others of the crew.

Secondly, to give power to hold Marine Courts of Enquiry in certain cases of casualties to ships, which were at present unprovided for, such as, for instance, where no material damage was sustained by the ship; where the accident did not happen on or near the coasts of India but the witnesses were in India; and where a ship was supposed to have been lost, and evidence regarding the circumstances under which she proceeded to sea, or was last heard of, was obtainable in India. It would be made clear that an investigation might be held at any port in a Province of British India where the ship and witnesses arrived, without reference to the place of occurrence of the accident to be enquired into.

Thirdly, to enable the Local Government to fix a minimum scale of provisions to be supplied to lascars and other oriental seamen.

In addition to these, a further amendment of the law had since been suggested and would be introduced into the Bill. This was the modification of section 26 of Act IV of 1875, so as to provide that, when the service of any lascar was to end at any port not in India, the agreement between him and the master should invariably stipulate for his return to India, and not for his employment on board some vessel bound to such other port as might be agreed on, possibly not in India. It was clear that, with the extended employment of Native seamen in the Eastern trade and the increasing number of Asiatic sailors found in a destitute condition at European ports, Government should, on economical grounds, if for no other reason, devise steps to secure the return of Indian seamen to this country at the expense of the persons who took them away.

Lastly, the procedure to be followed by Courts of Enquiry in connection with the suspension and cancellation of the Board of Trade certificates held by

officers of the Mercantile Marine, and with the suspension, cancellation and re-issue of local certificates granted in India, under Act I of 1859, was laid down in Act IV of 1875; but the procedure in those matters, where the certificates were issued under the English Merchant Shipping (Colonial) Act of 1869, was not indicated. The Board of Trade had suggested that provision should be made in the Indian Act extending the procedure described in it to Colonial certificates, and the Bill would give effect to this suggestion.

The Motion was put and agreed to.

The Council adjourned to Friday, the 25th February, 1881.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

CALCUTTA;
The 18th February, 1881.

NOTE.—The meeting which was originally fixed for Friday, the 11th February, 1881, was adjourned to Friday, the 18th February, 1881.

Govt. Central Press.—No. 512 L. D.—25-2-81.—250

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 25th February, 1881.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.G., G.M.S.I., G.M.I.E., *presiding*.

His Honour the Lieutenant-Governor of Bengal, K.C.S.I.

His Excellency the Commander-in-Chief, G.C.B., G.C.S.I., C.I.E.

The Hon'ble Whitley Stokes, C.S.I.

The Hon'ble Rivers Thompson, C.S.I.

The Hon'ble J. Gibbs, C.S.I.

Lieutenant-General the Hon'ble Sir D. M. Stewart, G.C.B.

Major the Hon'ble E. Baring, R.A., C.S.I.

The Hon'ble C. Grant.

The Hon'ble G. C. Paul, C.I.E.

The Hon'ble H. J. Reynolds.

The Hon'ble G. F. Mewburn.

The Hon'ble B. W. Colvin.

The Hon'ble Mahárájá Jotíndra Mohan Tagore, C.S.I.

ADMINISTRATOR GENERAL'S ACT AMENDMENT BILL.

The Hon'ble MR. STOKES moved that the Report of the Select Committee on the Bill to exempt Pársís from certain provisions of the Administrator General's Act, 1874, be taken into consideration. He said that the Bill as introduced excluded Pársís from the operation of section 36 of the Act, which empowered the Administrator General, in the case of estates not exceeding one thousand rupees in value, to grant to the representatives of the deceased, on their application, a certificate having much the same operation as letters of administration. A meeting of Pársí gentlemen, convened at Bombay last August by Sir Jamsetjee Jeejeebhoy, had represented—and its representation was supported by the Registrar of the High Court, the Administrator General of Bombay and the Local Government—that it was not desirable to exclude Pársís from the benefit of this section.

Sir Jamsetjee Jeejeebhoy wrote as follows:—

"In communicating this resolution I have been requested by the meeting to state the reasons which induced them to recommend that section 36 of the Act of 1874 should not be

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included within the exempting operation of section 2 of the proposed Bill. They consider that section 36 is a distinct portion of the Act, widely distinguished from that division of which sections 16 and 64 are the leading provisions. The scope of section 36 extends so far only as to vest in the Administrator General power to grant certificates of administration in respect of a certain class of estates at the instance of those interested in its administration. The Pársí community can have nothing to urge against such a provision, which has nothing in common with those sections from which they have petitioned to be exempted. The meeting was, therefore, of opinion that section 36 might be allowed to remain with advantage."

The Pársís of Surát and Broach, on the other hand, were opposed to allowing this section to remain applicable to the Pársí community; but their opposition proceeded almost altogether, if not entirely, from a fear that the application of section 36 to them must carry with it the application of section 37, which empowered the Administrator General to administer himself, of his own motion, or grant a certificate to a creditor.

The Select Committee had, however, found no difficulty in separating the two sections, and they had accordingly amended the Bill, so that section 36, but not section 37, should remain applicable to the Pársís.

Further, the Registrar of the High Court at Bombay and the Bombay Administrator General had represented, and some of the members of the Committee knew, that the need of a cheap and simple method of obtaining a representative title had been much felt by the heirs of Hindús and other Natives who died leaving in Calcutta, Madras or Bombay Government securities, shares in public companies, negotiable paper and deposits in banks, when the assets did not exceed in the whole Rs. 1,000. The Committee had, therefore. made section 36 of the Act (without section 37) applicable to persons of all descriptions, and they believed that it would provide for the poorer classes of Natives in the Presidency-towns a simpler, speedier and cheaper procedure than would be afforded them by conferring testamentary and intestate jurisdiction on the Presidency Small Cause Courts, as proposed in the Bill relating to those Courts now before the Council.

As commonly happened when an amending Bill of this description was introduced, suggestions had been made to the Committee for the alteration of the principal Act in points not touched by the Bill, and some of these suggestions had been adopted.

In the first place, it had been represented that inconvenience had resulted from the High Court at Fort William having ruled in *In the Goods of Hewson*, I. L. R. 4 Calc. 770, that the Administrator General was not, as an ordinary administrator was under Act XIII of 1875, entitled to obtain from one

of the Presidency High Courts letters of administration which would operate throughout British India. The Committee thought it would be advantageous to the public that the High Courts should have power to grant to an Administrator General letters operating in this way. Similar considerations would apply to cases where the Administrator General was named as executor by virtue of his office. The Select Committee had, however, provided that, when the Administrator General of one Presidency obtained a grant of this sort, he should not be entitled, in respect of assets situate in another Presidency, to commission at a higher rate than that allowed to the Administrator General of the latter Presidency. Thus, if the Madras Administrator General obtained a grant of letters of administration operating throughout the three Presidencies, he would get, in respect of assets situate in the Bengal Presidency, only three per cent. All clashing of jurisdictions would be avoided if every petition by an Administrator General for the grant of such letters contained a statement that no letters of administration to the deceased had been obtained from a High Court in another Presidency.

The next suggestion which the Committee had adopted had reference to section 28 of the Act of 1874. That section was intended to protect an Administrator General, who had made a distribution after giving due notice to claimants against the estate, from liability to claimants subsequently coming forward; but it was so drawn as to afford protection only when the distribution was deferred for a year from the grant of letters of administration. Now, for the convenience of the parties concerned, the Administrators General sometimes took upon themselves the risk of making the distribution within the year, but it was obvious that they could not generally be expected to do so; and, as a matter of fact, the section had led to delays in closing administrations which, with the speedy means of communication now-a-days available, were quite unnecessary. The High Court of Bombay had expressed its opinion that "the period within which an Administrator General might distribute the assets of a deceased person might be advantageously shortened;" and there was no doubt that one of the reasons why the public resorted to private agency-houses was that those houses generally distributed the assets in from three to four months. The Committee had accordingly substituted, for section 28 of the Act of 1874, a section similar to section 320 of the Indian Succession Act, which enabled an administrator to make a distribution after issuing "such notices as would be given by the High Court in an administration-suit," that was to say, as they were informed, notices of a length fixed with reference to all the circumstances of the particular case.

The only other amendment the Committee had made was the insertion of a section, before section 61 of the Act, empowering an Administrator General to examine on oath any person, who was willing to be so examined, regarding any question of fact on which the Administrator General might have to satisfy himself for the purposes of the Act. The want of such a power had been felt in cases in which there might be some room for doubt as to a claim, but not such reason to believe it to be false as would warrant the Administrator General in putting the claimant or the estate to the expense of legal proceedings—cases, for instance, in which the Administrator General wished to satisfy himself as to the validity of the claim made by a creditor who could not produce positive proof of the debt, or by a next-of-kin who could not furnish satisfactory evidence of relationship or identity, or cases where trust-property came into the hands of the Administrator General, in which the deceased had, apparently, no beneficial interest, but documentary proof of his being a mere trustee was wanting.

The Motion was put and agreed to.

The Hon'ble MR. STOKES also moved that the Bill as amended be passed.

The Motion was put and agreed to.

NORTH-WESTERN PROVINCES RENT ACT, 1873, AMENDMENT BILL.

The Hon'ble MR. COLVIN moved that the further report of the Select Committee on the Bill to amend the North-Western Provinces Rent Act of 1873 be taken into consideration. He said that, on the last occasion when the Bill was before the Council, he had explained all the amendments and changes which had been made in the Act up to that time. The Bill, at that meeting of the Council, was referred back to the Committee, with a view to repealing and re-enacting the Act instead of merely amending it. The Select Committee had carried out those instructions. But whilst consolidating the law they had received a few suggestions, chiefly from the North-Western Provinces, which they had thought it right to adopt, and they had inserted these in the Bill as now prepared.

A few words in respect of the changes so made were necessary. The first of them was in section 29. That section of the Act was to the effect that, "if any lease be granted, or if any agreement be entered into, by any landowner under engagement with Government for his land, fixing the rent of land for any period exceeding the term of such engagement, such lease or agreement

shall, on the expiration of the term aforesaid, be void at the option of either party." The object of that section was to prevent the sacrifice of the future claims of Government to revenue, by the creation of leases which would debar landholders from raising their rents when a new settlement was made, and which would thereby diminish the source from which the Government revenue was drawn. It appeared, however, from a communication which had been received by the Committee, that certain tea-planters in the North-Western Provinces, in ignorance of these provisions of the law, had accepted and granted leases either in perpetuity or for periods exceeding the terms of the periodical settlements, and that in some of these cases the rent, on the supposition that it would never be liable to enhancement, had been fixed at a very high rate. It was impossible for the State, in justice to the public, to recognise and maintain such perpetual or long-term leases in parts of the country which were liable to re-settlement and a periodical enhancement of revenue. On the other hand, it would be hardly less inconsistent with justice to leave the law in its present state, as by that course an unscrupulous lessor would be enabled to cancel his lease when there was, as far as he was concerned, no justification for doing so. In order to remove this difficulty, the Committee had gone as far as they thought they could go in the direction of giving relief, and had provided that in such a case the leases should not be voidable unless the tenant refused to pay, or the landlord to accept, what the Settlement-officer considered at the time to be a fair and reasonable rent. As land under tea-cultivation had never yet been assessed at a higher rate than adjoining lands under cereal crops, the rate of these would probably determine what the Settlement-officer would consider a reasonable rent, and the arrangement proposed would obviate, as far as it was possible to do so, the hardship which the tea-planters apprehended.

The next change made in the Bill was that the Committee had added a clause to section 44, providing that a tenant at fixed rates, or an occupancy-tenant, should be entitled to compensation for every improvement made without the consent of the landlord, after this Act came into force. The improvements which would entitle such tenants to compensation were detailed in section 44. By far the most important of these improvements was the construction of wells; in fact, it was scarcely too much to say that no cultivator on the North-Western Provinces was very likely to make any improvement in the land except in the shape of wells. Now, the High Court of the North-Western Provinces had recently ruled that *every* tenant had a right to make wells. The section, therefore, did not in any way go beyond what had been declared to be the existing law; it merely limited it, in accordance with existing customs. It

further provided that suits to recover compensation for, or to prohibit, breaches of the conditions of a lease should be tried in the revenue Courts, as was already the case with suits to eject a tenant for the like reasons. A divided jurisdiction in such cases would obviously be open to very great objections.

The next change was in section 174, which had been altered so as to correspond with section 190 of the Revenue Act. By that Act a proprietor whose estate was transferred for arrears of revenue was allowed to retain his ex-proprietary rights in respect of his *sír*-land. The section included in the present Bill placed the judgment-debtor, who was temporarily excluded from his estate with a view to satisfying the dues of a private creditor, in a similar position.

Fourthly, a change had been made in section 181, which related to claims made by a third party in respect of property taken in execution of a decree. In such cases, as the law now stood, if the third party failed to make good his claim to the property and an order was made for its sale, the claimant could bring a suit in the civil Court to establish his right, but the suit could not be for recovery of the property, but only for compensation from the judgment-creditor. It appeared to the Committee that there was no good reason for applying this provision to immoveable property. If the lands of a third party were erroneously sold by order of the Court, it seemed unjust that the rightful owner should not be entitled to recover his lands, but only to sue for compensation. The Committee had accordingly amended that section.

There was only one more point; the Committee had provided that the Act should come into force, not on the day on which it was passed, but from the 1st April next. The Act contained a number of new provisions, which it was desirable that all persons concerned should have time to acquaint themselves with, and with this view the Committee proposed postponing the operation of the Act till 1st April next.

His Excellency THE PRESIDENT doubted whether the Council should proceed to pass the Bill to-day. The question of the consideration of the Report would not create any difficulty, but he should like to know whether the Report had been circulated or not.

The Hon'ble MR. GRANT replied that it had not.

His Excellency THE PRESIDENT said that to him it appeared that some of the changes proposed in the Bill were of a good deal of importance, and that it would be hardly fair to Members of the Council if the Bill were to be passed to-

day. He thought, therefore, that it would be advisable to allow some further time for printing, circulating and considering the Bill, as well as for considering the Report of the Select Committee.

The Hon'ble MR. COLVIN thought that His Excellency's wishes would be met by postponing the Motion to pass the Bill until the next week.

The Motion was put and agreed to.

The Hon'ble MR. COLVIN asked leave to postpone the Motion that the Bill as amended be passed.

Leave was granted.

CORONERS' BILL.

The Hon'ble MR. STOKES moved that the Report of the Select Committee on the Bill to empower the Government of Madras to alter the local limits of the Coroner's Jurisdiction, and for other purposes, be taken into consideration. He said that the substance of the Bill as introduced was unaltered, but the Select Committee had taken this opportunity to make certain amendments in the Coroners' Act which experience of its working had shown to be desirable, and which had, for the most part, been brought to their notice by the present Coroner of Madras, Mr. Eardley Norton, the able son of an able and distinguished father.

The first of these was in section 8, which they had altered in such a manner that the Coroner would not be bound to act, as it had been supposed he was at present, on every information he received, but only if he saw reason to believe that the information was trustworthy.

The Select Committee had, in the next place, amended section 17 so as, first, to empower the Coroner to issue process beyond the local limits of his jurisdiction, and secondly, to remove a doubt which had been felt as to his power to issue a summons for the production of a document.

Lastly, they had added a clause to section 20, providing that the Coroner should be deemed to be a Magistrate for the purposes of section 26 of the Evidence Act. The effect of this last amendment would be that confessions made before a Coroner would be admissible in evidence, though the persons making them were at the time they made them in the custody of the police. As the Coroner was not a "Magistrate," the effect of the Evidence Act was that, when a prisoner was tried at the sessions, on the Coroner's warrant, a voluntary confession of guilt made at an inquest by that prisoner (while he

was in the custody of the police) to the Coroner was inadmissible in evidence. As even Village Munsifs had been held to be Magistrates for the purpose of section 26 of the Evidence Act (I. L. R. 2 Madras 5), it was clear that Coroners should be declared to be Magistrates for the purposes of that section.

The Motion was put and agreed to.

The Hon'ble MR. STOKES also moved that the Bill as amended be passed.

The Motion was put and agreed to.

EXEMPTION FROM MUNICIPAL TAXATION BILL.

The Hon'ble MR. COLVIN moved that the Report of the Select Committee on the Bill to exempt certain persons and property from Municipal taxation be taken into consideration.

His Excellency THE PRESIDENT said that he had looked at the Report of the Committee and was very glad to see the alterations which they had introduced into the Bill as originally introduced. He confessed that it appeared to him that the Bill, as first proposed, gave too extensive powers to the Government of India, and that the amount of uneasiness that was felt on the subject by a considerable number of municipal bodies in the country was justified by the very sweeping character of the clauses of the Bill as at first drawn; and he was very glad that the Select Committee had taken into consideration the representations made by them and had modified the Bill and had removed all reasonable objection to it. HIS EXCELLENCY thought that it was worthy of consideration by Government in the Executive Council, whether it would not be desirable to issue a circular to Local Governments after the Bill had been passed, drawing their attention to the provision and suggesting that they should appoint a person to communicate with the municipalities with a view to settling what Government should pay towards the municipal rates. This was the course followed in England. The right of the Crown on behalf of Crown property to exemption from rates had been maintained, but a sum had been settled in each case which was paid to the municipality in the place of Crown rates; and he could only say that he hoped the Local Governments in dealing with the question would deal with it in a considerate spirit, and that, under the particular circumstances of each case, the Government of India would be made to contribute, in regard to their own property, whatever would be fair and reasonable towards municipal rates.

The Motion was put and agreed to.

The Hon'ble MR. COLVIN also moved that the Bill as amended be passed.

The Motion was put and agreed to.

CRIMINAL PROCEDURE CONSOLIDATION BILL.

The Hon'ble MR. STOKES moved for leave to introduce a Bill to consolidate and amend the law relating to criminal procedure. He said that, notwithstanding the partial consolidation effected in 1872, the Criminal Procedure of British India was now contained in seventeen Regulations and Acts, comprising over 1,050 sections, and in the numerous and sometimes conflicting reported decisions of the four High Courts and the Chief Court of the Panjáb. Of these Acts, the chief were the three Codes—Act X of 1872 (the Code of Criminal Procedure), amended by Act XI of 1874, in force in the Mufassal; Act X of 1875, in force in the Presidency High Courts, the High Court at Allahabad and the Chief Court at Lahore; and Act IV of 1877, in force in the Courts of the Presidency Magistrates.

In his despatch (Legislative), No. 44, dated 26th October, 1876, the then Secretary of State for India, referring to the Presidency Magistrates Bill (now Act IV of 1877) and its variations, both in arrangement and phraseology, from the Code of Criminal Procedure, proceeded as follows:—

"This appears to me a wide departure from the settled policy of providing a simple and uniform system of law for India.

"The Draft Code of Criminal Procedure prepared by the Indian Law Commissioners in 1856 was intended by them for use in all the Courts, and although it was not deemed advisable to carry out the whole of this design when the Code of Criminal Procedure was enacted in 1861 for the Mufassal only, I think that circumstances are now more favourable to its completion. In the preparation of the High Courts Criminal Procedure Act, 1875, and of the present Bill, the whole of the Code of Criminal Procedure has been carefully reviewed and freely amended, and it seems desirable that the Mufassal districts should not continue under a less perfect law than the Presidency-towns, but that they should enjoy the benefit of the latest corrections and improvements; and that whatever rules are intended to be observed by all the Courts alike should be placed before all in the same language, care being taken at the same time to define the special duties and procedure of each. This is the best safeguard against conflicting rulings.

"I request, therefore, that your Excellency in Council will direct your attention to the question whether the Criminal Procedure Code of 1872 might not now be recast so as to combine with it the substance of the High Courts Act, 1875, and of the present measure, and thus at length to give to India a complete Code of Criminal Procedure."

MR. STOKES accordingly proceeded to frame a scheme for a Bill consolidating the Code of Criminal Procedure, the High Courts Criminal Procedure Act, the Presidency Magistrates Act and other enactments relating to Criminal Procedure. The general principles on which it was framed were four—first, that

the constitution and powers of the Criminal Courts should be dealt with at the beginning of the Code; secondly, that the rules relating to the prevention of offences should come before the rules relating to their prosecution; thirdly, that all matter of the same kind should be thrown together; and, fourthly, that the proceedings in a prosecution should be treated, as nearly as may be, according to the chronological order of the ordinary events; but that special proceedings and supplementary provisions should be dealt with apart. In this last respect the scheme followed the analogy of the Code of Civil Procedure, and was in accordance with a proposition thus laid down by Sir Fitzjames Stephen when introducing the Bill now Act X of 1872:—"The principle," he said, "on which a Code of Criminal Procedure ought to be arranged was perfectly simple. You would naturally begin at the first steps taken when a crime had been committed or was suspected: you would go on through the various steps from the time when the enquiry was first made till you got to the execution of the sentence of the Court. Exceptional incidents and supplementary arrangements should be separately dealt with. That was the principle on which a Code of Criminal Procedure ought to be framed."

The Government of India approved of this scheme and sent it to the Secretary of State enclosed in their Legislative despatch No. 41, dated 28th May, 1877.

On the 26th July, 1877, the Secretary of State replied that the scheme had his general approval, and consented that the Council should proceed at Simla with the preparation, and, if this should be completed, with the introduction and publication, of the Bill. MR. STOKES accordingly framed the Bill consolidating the laws above-mentioned, incorporating the numerous reported judicial decisions on the Code, and thus clearing up many doubtful questions, and making certain other amendments of the law which had from time to time been suggested by the Local Governments and the Home Department. MR. STOKES subsequently revised the Bill carefully with the assistance of Mr. Cockerell (then an Additional Member of the Governor General's Council, and a gentleman of large experience in the administration of the criminal law in the Mufassal) and of Mr. Fitzpatrick, the present Secretary in the Legislative Department, who also had had much similar experience, and who re-drew the chapters on Public Nuisances and on Security for keeping the peace. Care was taken to preserve, as far as possible, the language and arrangement of the present Code. But it was necessary for their main purpose—the combination in a compact form of the various laws regulating criminal procedure—to make some changes. The alterations in language were rendered inevitable, partly by the numerous decisions of the High Courts pointing out flaws in the drafting of the present

Mufassal Code,—flaws which it would have been absurd to perpetuate,—partly by the orders of the Secretary of State that the Mufassal Courts should have the benefit of the corrections and improvements made in the Codes in force in the Presidency-towns. The alterations in arrangement were necessitated, partly by the fact that the Bill consolidated no less than fourteen different enactments, partly because the principle on which the bulk of the present Code was arranged was not easily ascertainable.

The laborious task of revision occupied Mr. Cockerell, Mr. Fitzpatrick and MR. STOKES till April, 1879. The Bill was in many respects improved, but they found themselves unable to make any substantial alteration in an arrangement which seemed to them as clear and logical as the nature of the case could admit of. MR. STOKES then laid the revised Bill before the Executive Council, and the Bill was sent to the Secretary of State in a despatch dated the 22nd of May, 1879. It was also published in the Gazette under Rule 22 for the conduct of business, and was circulated to the various Local Governments with a request that it might be examined by selected local officers.

The result of this examination was contained in the thick folio volume before him. A good précis was made of this mass of papers, and, in the autumn of last year, his hon'ble friend Mr. Colvin (who, like Mr. Cockerell, had had large experience in the administration of criminal law), Mr. Fitzpatrick and MR. STOKES went steadily through it, and revised the Bill with the utmost care. The Bill, even as first published, might truly be described as the work of the whole body of Indian Judges and Magistrates, rather than of any individual or department. MR. STOKES was, therefore, not liable to the charge of vanity in saying that the drafting and arrangement of the new Bill were generally admitted to be superior to those of the present Code. On this point MR. STOKES might quote the opinion of Mr. Nelson, a Civil and Sessions Judge in the Madras Civil Service, one of the editors of the present Code, and well known as a somewhat hostile critic of Indian law and its administration :—

"I would wish to be permitted to observe, in the first place that the Bill appears to me to be most admirable, and to be likely to provide the country with a criminal procedure that, in theory at least, will leave but little to be desired. Most of the principal faults of the original Code have now disappeared, and, when a few more amendments of substance and language shall have been made, the Act probably will be as good as it can be in the present state of legal knowledge. Fortunately, processual law, whilst of infinitely greater importance to the people at large than substantive law, is many times more easy to make and understand; and a Code of Criminal Procedure would seem to be almost exempt by its very nature from the objections that habitually are raised against codification as often as a benevolent attempt is made to make the people know what they may or may

not do, what rights belong to them, what duties are laid upon them. And periodic correction of such a Code, whilst introducing all the improvements that experience can devise, will interfere with no vested interests and injure not a single class of men. It is not unreasonable, therefore, to hope for the possession of a thoroughly successful Code of Criminal Procedure, after one or two more revisions shall have been effected.

"It would be difficult to find fault with the main object of this Bill, which is to substitute a single homogeneous Act of 566 sections 'for fourteen enactments containing 1,046 unrepealed sections.' And the general arrangement and division of subjects would seem to be but little open to attack."

They found that a large number of suggestions were made for the improvement of the present law, and many of these they had adopted. Objections were, both in substance and form, generally taken to the clauses prescribing a limitation for prosecutions for certain offences, and to the clauses relating to the composition of offences. They felt the force of these objections, and accordingly struck out the clauses relating to limitation, and modified those which dealt with compounding, so that no reasonable opposition could now be made to them.

Furthermore, he must frankly admit that the Governments of Madras, the North-Western Provinces, the Panjáb and British Burma objected to the alteration in arrangement, because, they said, the change would involve the judiciary and police in much trouble before they mastered the new Act. But, as a learned Judge of the Panjáb Chief Court had remarked, this was an objection that almost refuted itself, because it was an argument against change at any time after the provisions of a Code had become familiar. And it seemed to MR. STOKES that those Governments had not sufficiently considered the necessity of obeying the orders of the Secretary of State and the desirability of consolidating the fourteen laws relating to criminal courts and criminal procedure and of incorporating the rulings of the High Courts on the present Code.

There was, moreover, reason to think that the inconvenience which would result from the passing of the Bill had been greatly exaggerated. Thus, to quote the despatch from the Government of the Central Provinces, dated 24th September, 1879:—

"It will not be very difficult for the Judges, Magistrates and practitioners of the Mufassal to make themselves acquainted with it, especially if it be provided with a good index [this is being prepared], and perhaps also with such a schedule as the Commissioner of Jabalpur proposes at the end of his letter, showing in parallel columns the section of the new Code corresponding to each section of the present Code." [This has already been prepared and will be found at the end of the Bill.] "And there will be after all but a temporary difficulty, whereas it will probably be a lasting advantage to have the existing law properly codified."

Mr. Plowden, the Judge of the Panjáb Chief Court, to whom he had referred, said :—

"I have seen an objection urged that Police-officers and others will be put to great inconvenience by the re-enactment of the Code with new provisions and re-arrangements. This is an objection that almost refutes itself, because it is an argument against change at any time after the provisions of a Code have become familiar. I am not an advocate of frequent changes in the law; but I think that, if the present appears to the Legislative Council a convenient time for undertaking to consolidate the law of Criminal Procedure, there is no external obstacle, at least in the familiarity of the Courts with the existing Code and Act X of 1875, so far as the Panjáb is concerned.

"For my own part I should be glad to see the measure become law without long delay."

And Mr. Justice Thornton, a Judge of the same Court, wrote :—

"In drafting and arrangement the proposed Bill for regulating the procedure of the Courts of criminal jurisdiction is, in my humble judgment, a great improvement upon Act X of 1872; and the inconvenience involved in its substitution for the existing law is, I believe, exaggerated; it will, after all, be only temporary and forgotten in two years."

To the same effect wrote the Judges of the High Court, North-Western Provinces. Thus Mr. Justice Spankie :—

"Without committing myself to the opinion that any total repeal of Act X of 1872 was absolutely required, I however must admit that, when mastered (and practitioners will not find it difficult to master it), the Code will be found to be an improvement in form on the old, whilst in many respects it removes many doubtful points, making it clear what the law referring to them really is.

"The form and arrangement of the Code has, I think, been improved, the different chapters taking better places than they did in Act X of 1872.

"I regret that I have not time to go fully into the Bill. It, however, seems obvious that, so far as simplicity goes, it is advisable to have the different Codes now in operation incorporated in one Act; and, so far as the law has been amended, it appears to have been amended in a right direction. I understand that there has been some outcry about the Bill, but I confess that I do not see in its provisions any reasonable justification of any such outcry."

And Mr. Justice Straight, whose experience as a criminal lawyer entitled him to speak with the highest authority on the subject, said :—

"I quite feel that in a country like this, where the dispensing of justice has so largely to be carried out by officers who have not had any special legal training, and whose magisterial duties are so frequently allied to and mixed up with functions of an administrative character, it is in the highest degree undesirable to embarrass them by frequent legislative changes in the procedure of the Courts over which they preside. To pursue an opposite course must only

entail confusion, perplexity and blundering. But, as far as I am able to judge, I see no reason to apprehend that any such consequences are likely to ensue from the introduction of the proposed Code. So far as actually new provisions are concerned, it can cause no excessive mental strain to Magistrates or Sessions Judges, and they need have no difficulty in mastering the few additional enactments it inaugurates; while, for purposes of convenient and ready reference, the amended arrangement of Parts and Chapters is a very great improvement. The consolidation of procedure of all Courts of criminal jurisdiction into one Act would be a sufficient justification for the proposed Code had it no other recommendations."

It would be seen, when the revised Bill was circulated, that the commencement of the measure had been postponed to 1st January, 1883—ten years from the date on which the present Code came into force. This was five years after the date at which, according to Sir Fitzjames Stephen, the Code should have been re-enacted. "I should say," he wrote in his well-known Minute on the administration of justice in British India, p. 38, "that this process ought to be repeated at least once in every five years for every important Act."

Should the Council agree to the present Motion, MR. STOKES proposed to avail himself at their next meeting of the Secretary of State's permission to introduce the Bill. He would then re-circulate it for criticism to the various Local Governments, which would, he hoped, consult the High Courts and the ablest Magistrates and Sessions Judges; but he would not take any further step in the matter till the Council re-assembled next November.

His Honour THE LIEUTENANT-GOVERNOR said he did not think his hon'ble friend had fully stated all the opinions on the subject which had been received: the opinions of those very much in favour of the proposal for the consolidation of the law had been freely quoted, but he believed that the High Court of Calcutta had very strongly protested against the great inconvenience to the Judges, and especially to Native Magistrates and officials, of having the whole Code entirely upset and re-arranged, just as they had thoroughly learnt the existing Code, and that, if this were done, it would be very difficult for them to find out anything to which they might wish to refer. He thought that sometimes there was an exaggerated idea of the value of symmetry, and, though the present Code was not perfect in its arrangement and was contained in a number of different Acts and amendments, still all officers knew now where to look for what they wanted. There was, no doubt, great force in the objection of the High Court as to the inconvenience which would be felt for many years to come, and all these officers, some of whom were not good English scholars, would have to thoroughly re-learn the whole re-arrangements of the Code. If any one could suppose that the new amended Code would be lasting, these objections might

be considered trifling, because the advantage of a re-arrangement made once and for ever would be obvious; but HIS HONOUR saw no more reason to suppose that his hon'ble friend's re-arrangements would be more lasting, or considered by his successors in office to be satisfactory and based upon intelligible principles, than the arrangement of the existing Code by his predecessors was considered to fulfil these requirements by him. He well recollected that at the time the existing Codes were considered by the authors to be perfect. The result would be that patching would go on, year after year, until finally people would not know where to find the law which they had to administer. At the same time HIS HONOUR was perfectly prepared to consider the Bill when it came out, and hoped that as little change as possible would be made for the sake of the mere symmetry of the Code.

The Hon'ble MR. STOKES said in reply that, in the case of the Native Magistrates and officials on whose behalf His Honour the Lieutenant-Governor had spoken, the choice lay between two difficulties. No doubt, if the Code were re-enacted, these gentlemen would for some little time experience some difficulty in finding their way through the provisions of the Code in its re-arranged form. But this difficulty would be diminished by the table showing the corresponding section-numbers and by the index which would accompany the new Act. And, on the other hand, if things were left as they were, the Native Magistrates would continue unable to understand the existing Code without making reference to some two hundred decisions of the High Courts, which were, so far as MR. STOKES knew, reported only in the English language and scattered through some thirty volumes. If the new Code was passed and translated, each of these gentlemen would have the result of these numerous decisions put before him in his own language in a clear and intelligible form. That surely would be a set-off against the temporary and (he ventured to say) exaggerated inconvenience of having to master the provisions of the new Code. His Honour had said that all officers now knew where to look for what they wanted in the present Code. That might, perhaps, be the case in the advanced province of Lower Bengal, but it was not so in other parts of India. Thus, Ullal Raghavendrá Ráo, of Mangalore (Papers No. 33), said:—"The Act as it is now is so much complicated that it is hardly possible for one to study the provisions of any one subject without referring to several chapters"; and Mr. Justice Plowden, of the Panjáb Chief Court, spoke (Papers No. 40) of "the present Code, in which many stray provisions are to be met with in unexpected and inappropriate places." The objection that long familiarity with a faulty law was a reason against improving that law reminded one of the old story of the monk, who had for years read *mumpsimus* in his breviary, and bitterly complained when some pedantic person, with what His Honour would call "an exaggerated idea of the

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value of symmetry," pointed out that *sumpsimus* should be substituted. Then, as regards the chance of his successor, or rather the successor of his successor, re-arranging the Code on another basis, His Honour was perhaps unaware that, thanks to the labours of Mr. Arthur Symonds, Sir Henry Thring and others, the principles on which the different parts of a Code or any other long draft should be distributed had now been ascertained, and, when once any large work of legislation was arranged on universally intelligible and accepted principles, it was improbable that any re-arrangement would be made. MR. STOKES had pointed out that the great features of the proposed re-arrangement were that the constitution and powers of the Courts should first be dealt with; that the rules relating to the prevention of offences should come before the rules relating to their prosecution; that all matter of the same kind should be thrown together; and, lastly, that proceedings in prosecutions should be dealt with according to the chronological order in which ordinary events occurred, but that special proceedings and supplementary provisions should be separately treated. Those, surely, were intelligible and reasonable principles, and the last of them had received the sanction of the legislature in the case of the Code of Civil Procedure, and had, as regards the Criminal Procedure Code, been enounced by Sir Fitzjames Stephen himself. As regards the present Code of Criminal Procedure, MR. STOKES would be glad if His Honour would point out on what principle its provisions had been arranged. He was unwilling to discredit the work of his predecessors, and for part of it (the text of the chapter on charges) he felt, if he might say so, sincere admiration. He preferred to rest his case on the duty of the Government to obey the orders of the Secretary of State, and on the desirability of consolidating the fifteen enactments and the numerous judicial decisions in which the law relating to criminal courts and criminal procedure was now to be found. But, if challenged, he was ready to give instances to show the absence from the bulk of the present Code of any satisfactory principle of arrangement.

His Honour THE LIEUTENANT-GOVERNOR observed that he had heard the same remark made in regard to the superiority of the existing Code over the Act which it displaced; it was then supposed that the Codes were based on such intelligible principles that no one could ever question their arrangement.

The Motion was put and agreed to.

JHÁNSÍ ENCUMBERED ESTATES RELIEF BILL.

The Hon'ble MR. COLVIN asked leave to postpone the presentation of the Report of the Select Committee on the Bill to provide for the relief of Encumbered Estates in the Jhánsí Division of the North-Western Provinces.

Leave was granted.

INDIAN PENAL CODE AMENDMENT BILL.

The Hon'ble Mr. Stokes moved for leave to introduce a Bill to amend the Indian Penal Code. He said that this little Bill was a mere attendant on the great Code of Procedure which he had just obtained leave to introduce—a *scapha* attached to that *navis longa*. Its object was to make six amendments of the Indian Penal Code, and these he would shortly state to the Council.

The first was to render the word "offence," as used in sections 65, 66 and 71 (as amended by the Bill), applicable to things punishable under the Code or any special or local law.

The second was to render section 64 (as to sentence of imprisonment on default of payment of fine) applicable to convictions under special and local laws in case of offences punishable both with imprisonment and fine. It would correspond with the first clause of section 309 of Act X of 1872, which would be repealed by the new Code of Criminal Procedure.

The third was to declare that, when an offence was punishable with fine only, the imprisonment in default of payment of the fine should be simple: this was in accordance with a decision of the Bombay High Court (5 Bom. C. C. 55).

The fourth was to declare, by an addition to section 71 of the Penal Code, that, when anything was an offence falling within two or more separate definitions, the offender should not be punished with a more severe punishment than the Court which tried him could award for any one of such offences. This would correspond with the latter part of the second clause of section 454 of the present Code of Criminal Procedure; but it was clearly matter of substantive law, and should, therefore, be placed in the Penal Code.

The fifth was to replace the obscure Exception which now stood in section 214 of the Penal Code by the following:—

"*Exception.*—The provisions of sections 213 and 214 do not extend to any case in which the offence may lawfully be compounded."

This would be read with section 345 of the new Code of Criminal Procedure, which declared that certain specified offences, and no others, might be compounded. The illustrations to section 214 of the Penal Code, which were now a cause of darkness rather than of enlightenment, would be repealed.

The sixth amendment was one of much practical importance, and had been in substance recommended by the Government of the North-Western Pro-

vinces. It rendered the offence of committing mischief by fire intending to cause damage to agricultural produce worth ten rupees or upwards punishable with the severer penalty provided by section 435 of the Code. As the law stood, mischief by fire was cognizable only when committed with intent to cause damage to the amount of Rs. 100 or upwards. But agricultural holdings were generally so small that the total produce of a holding was often less than Rs. 100. The consequence was, that a raiyat might have garnered his crop and lost the whole of it through the act of an incendiary, and yet the offence could only be punished with three months' imprisonment and fine, and might not be investigated by the police without the special order of a Magistrate. The paragraph in the second schedule to the new Code of Criminal Procedure, which referred to section 435 of the Penal Code, had been framed in accordance with the proposed amendment, and the result would be to render the offence in question cognizable by the police.

The Motion was put and agreed to.

The Council adjourned to Friday, the 4th March, 1881.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

CALCUTTA;
The 25th February, 1881.

Government Central Press No 619 L D—7-3-81.—200.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 4th March, 1881.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.G., G.M.S.I., G.M.I.E., *presiding*.

His Honour the Lieutenant-Governor of Bengal, K.C.S.I.

His Excellency the Commander-in-Chief, G.C.B., G.C.S.I., C.I.E.

The Hon'ble Whitley Stokes, C.S.I.

The Hon'ble Rivers Thompson, C.S.I.

The Hon'ble J. Gibbs, C.S.I.

Lieutenant-General the Hon'ble Sir D. M. Stewart, G.C.B.

Major the Hon'ble E. Baring, R.A., C.S.I.

The Hon'ble C. Grant.

The Hon'ble J. Pitt Kennedy.

The Hon'ble H. J. Reynolds.

The Hon'ble G. F. Mewburn.

The Hon'ble Mahárájá Jotíndra Mohan Tagore, C.S.I.

CRIMINAL PROCEDURE CONSOLIDATION BILL.

The Hon'ble MR. STOKES introduced the Bill to consolidate and amend the law relating to Criminal Procedure, and moved that it be referred to a Select Committee consisting of the Hon'ble Messrs. Thompson, Gibbs, Paul and Reynolds and the Hon'ble Mahárájá Jotíndra Mohan Tagore and the Mover. He said that, when he had obtained leave to introduce the Bill, he had stated that no less than three Codes of Criminal Procedure were now in operation in British India—Act X of 1872, amended by Act XI of 1874, which was in force throughout the Mufassal; the High Courts' Act, X of 1875, which was in force in the Presidency-towns, Allahabad and Lahore; and the Presidency Magistrates' Act, IV of 1877, also in force in the Presidency-towns.

Many of the provisions of these Codes merely repeated one another; many of their rules, though dealing with the same subjects, unnecessarily varied in language; and the result was that the bulk of the Indian Statute-book was far greater than was needed, and that the Courts, when construing one Code, were often deprived of the guidance of prior decisions on another.

The primary object of the Bill, which had been framed at the suggestion of Lord Salisbury when Secretary of State for India, was to recast the Code of 1872, combining with it the substance of the High Courts' Act and the Presidency Magistrates' Act, and incorporating in it the numerous reported decisions on its wording, and thus at last give to India a single and complete Code of Criminal Procedure, and carry out, so far, the policy of providing a simple and uniform system of law for this country. The language and arrangement of Act X of 1872 had, for obvious reasons, been departed from only so far as was necessary for the main purpose of the Bill. Nothing had been altered save what could be clearly shown to be defective or inconsistent with other parts of the plan.

Though many of the outlying Acts and Regulations dealing with criminal procedure were repealed and re-enacted by Act X of 1872, many more were still untouched, and the secondary object of the present Bill was to consolidate these enactments, which were twelve in number :—

Acts.

XXIII of 1840 (*Execution of process*).
XXXIV of 1850 (*State-Prisoners*).
III of 1858 (*State-Prisoners*).
V of 1861, sections 6, 24, 37 to 40 inclusive, part of section 35 (*Police*).
XVIII of 1862 (*Administration of Criminal Justice in the High Courts*).
II of 1869 (*Justices of the Peace*).
XXII of 1870, sections 2 and 4 (*Application to European British subjects of Acts giving summary jurisdiction*).
XXI of 1879, Chapter III (*Inquiries in British India into crimes committed abroad by British subjects*).

Regulations.

Bengal Regulation III, 1818 (*State-Prisoners*).
Bengal Regulation XX, 1825 (*Jurisdiction of Courts Martial*).
Madras Regulation II, 1819 (*State-Prisoners*).
Bombay Regulation XXV, 1827 (*State-Prisoners*).

The result of consolidating the Acts and Regulations above specified would be to substitute a single Act of 568 sections for fifteen enactments containing 1,055 unrepealed sections.

The opportunity had been taken to make no less than one hundred and twelve amendments of the substance of the law. These were carefully described in the Statement of Objects and Reasons, and on the present occasion he would

confine himself to mentioning and explaining a few of the more important. He must, however, observe, on the threshold, that the present Bill was divided into nine Parts—the first containing the usual preliminary matter; the second dealing with the constitution and powers of the criminal Courts and offices; the third containing some general provisions; the fourth treating of the prevention of offences; the fifth, of information to the police and of their powers to investigate; the sixth, of proceedings in prosecutions; the seventh, of appeal, reference and revision; the eighth, of special proceedings; the ninth, of supplementary provisions.

Part I consisted of a single chapter containing the usual preliminary matter. The wording of some of the definitions in Act X of 1872, which defined phrases that did not occur in the Act, had been amended, and definitions of "to sign," "public prosecutor," "pleader," "offence," "chapter," "schedule," "place," and "police-station" had been added. The definition of "investigation" had been extended so as to comprise the proceedings of persons authorized by a Magistrate to make local investigations. The definition of "cognizable offence" had been amended so as to connect it with the third column of the second schedule, which stated "whether the police might arrest without warrant or not." As the law stood in Act X of 1872, the definition of "cognizable offence" and section 92, clause 1, really gave no information on the subject, for that column was nowhere connected with the Code. This defect had in one case, of which MR. STOKES had been informed by Mr. Arthur Macpherson, and probably in others, caused considerable difficulty. A clause had been added to the definition of "High Court" so as to enable the Governor General in Council to appoint in outlying territories, where no such Court was established by law, an officer to perform its functions under the Code.

Part II—as to the constitution and powers of the criminal Courts and offices—consisted of two chapters, of which the first dealt with the classes of criminal Courts, territorial divisions, Courts outside the Presidency-towns, the Courts of the Presidency Magistrates, Justices of the Peace, and the suspension and removal of Judges, Magistrates and Justices of the Peace. The provisions of the Police Act (V of 1861), section 6, had been incorporated in this chapter, section 14. The Local Government had been empowered (section 16) to make rules for the guidance of Magistrates' Benches. This would result in uniformity of practice wherever such uniformity was desirable. Assistant Sessions Judges had been declared (section 17) subordinate to the Sessions Judge in whose Court they would exercise jurisdiction. This would preclude a doubt which had been raised on the subject.

The second chapter treated of the powers of Judges and Magistrates, the description of offences cognizable by each Court, the sentences which might be passed by Courts of various classes, and the mode of conferring powers on the latter. Magistrates of the first class were forbidden (section 29) to try offences under special or local laws which were punishable with imprisonment for more than seven years: such grave cases should be tried by a higher Court. All Magistrates of the first and second classes, and all Magistrates of the third class when specially empowered, were to have the powers of an officer in charge of a police-station (section 38). It was desirable that the police powers which Magistrates could exercise in investigating offences should be clearly defined, which certainly was not the case at present. In section 40 (= Act X of 1872, section 56), as to the continuance of powers of an officer transferred to another local area, words had been introduced to shew that powers conferred by one Local Government did not accompany an officer when he was transferred to a province under another Local Government. A different view had been taken in Assam and, possibly, elsewhere.

Part III contained certain general provisions which it seemed convenient to group together, and which, to avoid forward references, must stand near the beginning of the Code. They related to the following matters:—aid and information to the Magistrates, the police and persons making arrests; arrest, escape and retaking; processes to compel appearance and production of documents, and processes for the discovery of persons wrongfully confined. Here, again, the changes in the law were little more than verbal. But some useful amendments in substance had been made. Thus, to the offences which the public were bound to assist in preventing had been added (section 42) attempts to injure public property, railways and canals; the public (section 42) must assist in cases of fire dangerous to human life or valuable property; the section (45) requiring village-headmen, &c., to report had been extended to escaped convicts and proclaimed offenders, and (to provide for villages in hill-passes through which bands of dacoits habitually proceeded) also to cases where the criminal merely went through the village: the section (46) which authorized, in the case of forcible resistance, the use of necessary means to effect arrests, had been extended to meet the case of attempts to evade them: power had been given (section 49) to break open the doors of a house for the purpose of liberating persons who had lawfully entered for the purpose of making arrests therein: persons making arrests had been expressly empowered (section 53) to take from the person arrested any offensive weapons which he might have about him: the police had been authorized (section 54) to arrest, without warrant, deserters from the Navy; and sections (66, 67) equivalent to

Act XXV of 1861, section 112, had been inserted to provide for the retaking of persons escaping or rescued from lawful custody.

Nothing in the whole course of criminal procedure was so productive of vexatious proceedings and serious consequences as arrests. The utmost care, therefore, had been taken in framing the sections on this subject so as to make them clear and precise Thus, the wording of section 178 of the present Code, which empowered the police to use "all means necessary to effect the arrest" of a person forcibly resisting or attempting to escape, appeared dangerously wide. It might, conceivably, be held to justify the killing of any runaway criminal. The Bill, therefore, explained that this power did not give the right to cause the death of an arrested person who was not accused of a capital offence. The Bill here followed the law of Scotland, which, in Mr. Mayne's opinion (*Commentaries on the Indian Penal Code,* s. 106) was in India the safer rule.

Sub-divisional Magistrates (as the Bill called "Magistrates of divisions of districts") had been empowered (section 78) to direct warrants to landholders, &c., for the arrest of escaped convicts. This extension was in harmony with the large powers generally possessed by Magistrates in charge of sub-divisions.

The present Code did not provide how attachment of debts and other moveable property of proclaimed persons was to be effected. Provision had, therefore, been made (section 89) for this purpose; and the powers, duties and liabilities of receivers had been declared by reference to the Code of Civil Procedure.

Under the Bill (section 95) a person required merely to produce a document would (as under the Civil Procedure Code, section 164) be deemed to have complied with the requisition if he caused the document to be produced instead of attending personally to produce it. This amendment of the law would obviously tend to save time and expense, and thus diminish the unpopularity of our Courts.

Provision was made (section 104) for making a list (signed by witnesses) of things found in execution of a search-warrant beyond the jurisdiction of the Court issuing it. The necessity of obtaining the signature of the witnesses would be of use as a check upon the irregularities which, it was said, sometimes occurred in the course of searches.

A clause (section 101) had been inserted giving Presidency Magistrates, Magistrates of the first class, and Sub-divisional Magistrates power to issue

warrants to search for persons wrongfully confined. No such power, though needed, was supposed to exist in India, except, of course, in the Presidency-towns, where the High Courts issued, under Act X of 1875, directions of the nature of a *habeas corpus*.

Part IV, which related to the prevention of inchoate offences, and arresting the course of such as were in operation, came, it was considered, properly before Part VI, which related to their prosecution when already committed. This was the order followed by Edward Livingston, the eminent jurist, in preparing his system of penal law for the State of Louisiana. The Bill, as now framed, dealt merely with the mode of preventing apprehended offences by the intervention of the officers of justice. Prevention by resistance was, it was thought by many of the authorities to whom the first draft of the Bill had been submitted, sufficiently dealt with by the sections of the Penal Code relating to the right of private defence This Part comprised six chapters, dealing, respectively, with security for keeping the peace and for good behaviour; the dispersion of unlawful assemblies; suppression of nuisances; disputes as to immoveable property; and, lastly, the preventive action of the police. Under a similar heading, "Preventive jurisdiction of Magistrates," the present Code contained a chapter (XLI) relating to the maintenance of wives and families; but MR. STOKES thought that this subject (if it came at all into a Code of Criminal Procedure) would be more fitly placed in a Part dealing with special proceedings, and the Council would accordingly find it in Part VIII of the Bill.

In the chapter relating to security for keeping the peace and for good behaviour, the section (107) dealing with security for keeping the peace on conviction had been extended to cases in which the accused was convicted of criminal intimidation by threatening injury to person or property This was an offence of the same nature as taking unlawful measures with the intention of committing a breach of the peace, and should, therefore, as regards the taking of security, be placed on the same footing. When the conviction was set aside on appeal or otherwise, the bond would become void. On this the present law was silent.

In section 111 (= sections 505, 506 of the present Code) the words which gave the Magistrate power to demand security from persons of "notoriously bad livelihood" or of "a dangerous character" had been omitted. It had been objected that these words were vague, and that the authority which they placed in the hands of the Police was liable to great abuse.

The Magistrate was empowered (section 133) to make an order as to the character and class of the sureties required. This, it was hoped, would prevent

certain persons making a trade of becoming sureties. The object of the law (as would be seen from section 399 of the present Code) was not merely to provide a money-security, but also to obtain respectable persons as guarantees for the good behaviour of the criminal concerned.

The Bill contained no provision corresponding to section 499 of the present Code, which authorised a Magistrate, with the sanction of the Court of Session, to extend the time for which a person had been bound to keep the peace. If, before the expiration of the term of the original bond, it appeared to the Magistrate unsafe to release the obligor at the end of that term, in justice to the obligor fresh proceedings should be instituted.

Chapter (IX) on dispersion of unlawful assemblies contained the rules for calling out and employing the military, in aid of the civil, power. Here, the only substantial change made by the Bill was that volunteers enrolled under the Indian Volunteers Act, 1869, were placed on the same footing as soldiers of Her Majesty's Army.

As to the Magistrate's powers to abate public nuisances, chapter X, section 134, corresponding with section 521 of the present Code, had been extended to cases of keeping goods or merchandise (for example, damaged rice) injurious to the public health, and of carrying on occupations offensive to the religious feelings of any considerable section of the community. The latter extension was intended to meet such cases as that of a butcher exercising his trade in a Hindú town, so as to cause risk of breach of the peace.

The power to issue injunctions, conferred on Magistrates by section 518 of the present Code, was intended to be exercised only in urgent cases where a speedy remedy was desirable. The Bill (section 145) provided that no such orders should remain in force for more than two months, unless, in case of danger to human life, health or safety, or a riot or affray, the Local Government directed otherwise. Where time allowed, the procedure must be under chapter X.

Part V consisted of a single chapter relating to information to the police and their power to investigate. It corresponded with chapter X of Act X of 1872, and sections 379 and 380 of the same Act. The words "or that immediate arrest is not necessary," which were to be found in section 117 of Act X of 1872, had been omitted from section 158 of the Bill, as it was not apparent why a Police-officer should be debarred from investigating a case of a cognizable offence because he did not at starting feel himself justified in arresting any person.

Section 165 made it clear that confessions to Magistrates should not only be "taken," but signed and certified, like examinations of accused persons. In the form of memorandum relating to confessions, words had been introduced to show that the confession was taken in the Magistrate's presence and hearing, and that it contained a full and true account of the statement.

In the sections (166 and 167) which dealt with searches by the police, and which corresponded with sections 379, 380 of the present Code, amendments had been introduced to meet difficulties which had arisen in practice. Section 168 (= Act X of 1872, section 124, paragraphs 2, 3 and 4), as to the procedure where an investigation could not be completed within twenty-four hours, had also been amended. On the one hand, there was strong objection to allowing an accused person to be detained at a police-station longer than was necessary, and, on the other, to insist on his being forwarded to the Magistrate, when his presence on the spot might be indispensable for tracking out crime or recovering property, might be a serious impediment to justice. Under proper precautions, the retention of the accused for sufficient reasons would, as now, be allowed, but the period of detention had been limited to fifteen days on the whole.

Part VI treated of proceedings in prosecutions up to appeal, and was divided into sixteen chapters, arranged as follows :—

XV. Jurisdiction of Criminal Courts in Inquiries and Trials.
XVI. Complaints to Magistrates.
XVII. Commencement of Proceedings before Magistrates.
XVIII. Inquiry into cases triable by the Court of Session or High Court.
XIX. The Charge.
XX. Trial of Summons-cases by Magistrates.
XXI. Trial of Warrant-cases by Magistrates.
XXII. Summary Trials.
XXIII. Trials before High Courts and Courts of Session.
XXIV. General Provisions as to Inquiries and Trials.
XXV. Evidence.
XXVI. The Judgment.
XXVII. Submission of Sentences for Confirmation.
XXVIII. Execution.
XXIX. Suspensions, Remissions and Commutations of Sentences.
XXX. Previous Acquittals or Convictions.

The Council would see that the above-mentioned chapters were arranged, as nearly as might be, according to the chronological order of the ordinary events in a prosecution.

Chapter XV (as to the jurisdiction of the Courts in inquiries and trials) dealt, first, with the place of inquiry or trial: and, secondly, with the conditions requisite for the initiation of proceedings, such as the receipt of a complaint, a police-report, the receipt of information from private persons, commitment by Magistrates, and sanction by Courts, public servants or the Government.

Sections 9 and 10 of the Foreign Jurisdiction Act (XXI of 1879), which dealt respectively with the liability of British subjects for offences committed out of British India, and with the reception in evidence of depositions made before Political Agents, had been transferred to this part of the Code (sections 189 and 190), which was obviously their proper place.

To the provisions contained in the existing law regarding the transfer of cases, there had been added a clause providing that, when any Magistrate of the first class, specially empowered in this behalf by the Magistrate of a district, had taken cognizance of any case, he might transfer it for inquiry or trial to any other competent Magistrate in such district. This would enable such Magistrates to distribute the work in their Courts, when it was necessary to do so, with less delay than at present.

In Chapter XVIII, of inquiry into cases triable by the Court of Session or High Court, power was given (section 210) to the Magistrate to discharge the accused at any stage of the case if, for reasons to be recorded, the Magistrate considered the charge to be groundless.

Chapter XIX, of the charge, *i. e.*, the written accusation of an offence, instead of being placed, as in the present Code, after the chapters relating to trials, appeals and execution, would be found where one would naturally look for it, namely, between the rules as to inquiries and the rules as to trials. There could not, obviously, be a prosecution until the person who had suffered by the offence or knew that it had been committed, accused the offender. This chapter extended to the whole of British India the amendments in Act X of 1872, sections 439 to 459, made by Act X of 1875; and, with reference to Mr. Justice West's observation in *Reg.* v. *Chand Hur*, 11 Bom. 241, on the corresponding section (457) of Act X of 1872, section 239 of the Bill had been confined to offences consisting of several particulars, a combination of some only of which constituted a complete minor offence.

From the section (236) relating to joinder of charges, corresponding with section 454 of the present Code, had been omitted all provisions as to the amount of punishment. They obviously belonged to substantive law, not to procedure, and would find their proper place in the Penal Code. The illustra-

tions had also been amended. Some of them, as they stood in the present Code, were inaccurately worded: others did not illustrate the paragraph to which they were made to refer.

Provision had been made in section 239 for the case where a person charged with an offence proved circumstances which reduced it to a minor offence. He might then be convicted of the minor offence, though he was not charged with it.

Chapter XX dealt with the trial of summons-cases. To the section (251) which related to frivolous and vexatious complaints a clause had been added providing that, when awarding compensation in any subsequent civil suit relating to the same matter, the Court should take into account any sum paid or recovered as compensation under this section. A similar provision, when compensation had been given out of a fine, was contained in section 308 of the present Code.

In Chapter XXI, as to trials of warrant-cases, as in Chapter XVIII, had been inserted a clause (section 254) authorizing the Magistrate to discharge the accused at any stage of the case if, for reasons to be recorded, the Magistrate considered the charge to be groundless. As the law stood (Act X of 1872, section 215), no matter how groundless the charge might be, the Magistrate was compelled, before discharging the accused, to take the evidence of the complainant and of all the witnesses whom the prosecution might bring forward. The provision (Act X of 1872, section 218) that the accused should, while making his defence, be allowed to recall and cross-examine the witnesses for the prosecution, had been expressly confined by the Bill (section 257) to cases where the witnesses were present in the Court or its precincts. The unrestricted power conferred by the present Code, to recall witnesses for the prosecution after they had left the Court, was said to be often abused for the purpose of harassment and delay.

In Chapter XXII, as to summary trials, the Local Government had been authorized to confer on Benches invested with second or third class powers jurisdiction to try abetments of, and attempts to commit, the offences which they might now try summarily. The omission in section 225 of the present Code to provide for these abetments and attempts was obviously *per incuriam*. The offences of retaining stolen property not exceeding Rs. 50 in value, and assisting in the concealment or disposal of stolen property not exceeding Rs. 50 in value, had been added to the list of those triable in a summary way; and the offence of receiving stolen property would not be so triable where its value exceeded that amount.

Chapter XXIV contained some general provisions as to inquiries and trials. Here, at the instance of many authorities consulted, the power of tendering conditional pardons to accomplices, which was now exercisable only in cases triable by the Sessions Court, had been extended (section 337) to all warrant-cases. This change was an important one, and further opinions on its propriety were desirable.

The power to examine the accused given by section 250 of the present Code had been modified by the omission of the words "and shall question him generally on the case after the witnesses for the prosecution have been examined."

HIS HONOUR THE LIEUTENANT GOVERNOR asked which was the corresponding section of the Bill ?

The Hon'ble MR. STOKES replied that His Honour would find it at once by turning to the table at the end of the Bill, showing the corresponding section-numbers. It was 342.

MR. STOKES would like to have gone further and expressly provided, in accordance with two decisions of the Calcutta High Court, that by exercising the power in question the Sessions Court was not to establish a Court of inquisition, and to force a prisoner to convict himself by making some criminating admissions, after a series of searching questions the exact effect of which he might not readily comprehend. The real object was to enable a Judge to ascertain from time to time from a prisoner, particularly if he was undefended, what explanation he might desire to offer regarding any fact stated by a witness; or after the close of the case, how he could meet what the Judge might consider damnatory evidence against him (I. L. R. 6 Cal. 102). In deference to the contrary opinions of the two gentlemen, Mr. Cockerell and Mr. Colvin, who had so loyally helped him in the revision of the Code, he had abstained from making any provision on the subject; but he would certainly bring the matter to the notice of the Select Committee to which he trusted the Bill would be referred. He would take the present opportunity of quoting what Mr. Livingston had written on this subject :—

"An unrestrained right of interrogating is also very apt to produce insidious and catching questions. Instead of a cool and impartial attempt to extract the truth, the examination becomes a contest, in which the pride and ingenuity of the Magistrate are arrayed against the caution or evasions of the accused, and every construction will be given to his answers that may fix upon him the imputation of guilt."

MR. STOKES would leave this part of the Bill with the remark that the power to interrogate accused persons, given by the section in Act X of 1875, corresponding with section 250 of the present Code, had, according to his hon'ble and learned friend the Advocate General of Bengal, never been used by the High Court at Fort William in the exercise of its original criminal jurisdiction.

Much doubt existed as to the offences which might lawfully be compounded. The Exception to section 214 of the Penal Code (in which the law on the subject was contained) was excessively obscure, for it could seldom be said of any act that it was an offence "irrespective of the intention of the offender," and this obscurity was increased, rather than diminished, by the illustrations annexed to that section, two of which gave the case of an assault, though the definition of that term in section 351 made the offence depend on the intention. The Bill repealed these illustrations; and section 345 declared in unmistakeable language that certain specified offences, and no others, might be compounded. These were—

Causing hurt (Penal Code, sections 323, 334, 337, 338).
Wrongfully restraining or confining (Penal Code, sections 341, 342).
Assault or use of criminal force (Penal Code, sections 352, 358).
Unlawful compulsory labour (Penal Code, section 374).
Mischief, when the loss or damage was caused to a private person (Penal Code, sections 426, 427).
Criminal trespass and house-trespass (Penal Code, sections 447, 448).
Criminal breach of contract of service (Penal Code, sections 490, 491, 492).
Adultery, and enticing, &c., a married woman (Penal Code, sections 497, 498).
Defamation (Penal Code, section 500).
Printing or engraving defamatory matter (Penal Code, section 501).
Sale of printed or engraved substance containing defamatory matter (Penal Code, section 502).
Insult intended to provoke a breach of the peace (Penal Code, section 504).
Criminal intimidation, except when the offence was punishable with imprisonment for seven years (Penal Code, section 506).

The offences of voluntarily causing hurt, voluntarily causing grievous hurt, and cheating, punishable under the Indian Penal Code, sections 324, 335 and 417, would be compoundable with the permission of the Court, and by the person to whom the hurt had been caused, or by the person cheated, as the case might be.

The power of the Government to commute punishment (section 402) had been so worded as to authorize a sentence of rigorous, to be commuted to one of simple, imprisonment. This was not, apparently, possible under section 322 of the present Code, where the law on the subject was now to be found.

Part VII dealt with appeals, references and the revisional jurisdiction of the High Court.

The power to appeal in criminal cases was liberally bestowed by the present law, and only two new cases had been provided for by the Bill. An appeal had been given (section 405) from orders rejecting applications for delivery of attached property. An appeal had also been given from convictions in contempt-cases by Courts of Small Causes in the Presidency-towns.

Section 408 provided that the appeal from a District Magistrate exercising the enhanced powers conferred under section 34 (= section 36 of the present Code) should lie to the Court of Session in cases in which the sentence had not been submitted to that Court for confirmation, and, when it had been so submitted, to the High Court. This put the appeals in question on the same footing as appeals from an Assistant Sessions Judge. There seemed to be no reason for making any distinction between the two.

Section 423, in accordance with a decision of the Madras High Court (I. L. R. 1 Mad. 54), declared that, when an Appellate Court enhanced any punishment inflicted by the sentence appealed against, it might inflict punishment of a different kind. Personally, MR. STOKES, in common, he believed, with most Indian lawyers, was averse to the power of enhancing punishments which the present Code (section 280) gave to the Appellate Courts. Its existence tended to deter convicted, but, possibly, innocent, persons from presenting appeals, and thus to deprive the lower Courts of the control which could only be effectively exercised over them by means of an unhampered system of appeal. This matter, as well as the power to examine accused persons, he hoped to bring to the special notice of the Select Committee.

In the case of an appeal from an acquittal, section 427 expressly authorized the High Court to order the accused to be arrested and brought before it, and to commit him to prison pending the disposal of the appeal, or admit him to bail. In the absence of this power cases had occurred in which criminals, afraid of the result of the appeal, escaped, and made the appeal on behalf of the Government of no avail.

A section (431) suggested by a decision of the Bombay High Court (I. L. R. 2 Bom. 564) provided that appeals by persons required to give security for good behaviour, or by convicted persons, should abate on their death, and

that appeals against acquittals should abate on the death of the accused. The power of revision conferred by section 439 would enable the High Court, where justice to the family of the convicted person might so require, to alter his sentence even after the appeal had abated.

Sub-divisional Magistrates empowered by the Local Government in this behalf, were authorized (section 435) to call for records of inferior Courts. This was in accordance with the powers of control in other respects which they exercised.

Where, in the opinion of the Court of Session or District Magistrate, an accused person had been improperly discharged by an inferior Court, the accused should not be committed without having had an opportunity of shewing cause why the committal should not be made (1 O'K. 98). Provision to this effect had been made by section 436.

When the Court of Session or District Magistrate reported, for the orders of the High Court, the results of examining any proceeding, and recommended that a sentence be reversed, the Court of Session or District Magistrate might order (section 438) its execution to be suspended, and the accused, if in confinement, to be released on bail or on his own bond.

Section 439 (corresponding with Act X of 1872, section 297) had been framed so as to allow the High Court, when exercising its revisional jurisdiction, to interfere with improper acquittals. There was reason to believe that this change was in accordance with the intention of the framers of Act X of 1872.

Where the High Court exercised its powers of revision, no order (section 440) would be made to the prejudice of the accused, unless he had had an opportunity of being heard.

Part VIII, as to special proceedings, dealt with the procedure relating to the following matters :—criminal proceedings against Europeans and Americans; lunatics; contempts of Court and other offences affecting the administration of justice; maintenance of wives and children; State-prisoners; proceedings in the nature of *habeas corpus*.

Section 451 removed some unnecessary differences which existed in the present law between the procedure of the High Courts and Courts of Session in cases in which European British subjects were concerned. In particular, it was provided that, in the Court of Session as well as in the High Court, the requisite moiety of the jury or assessors might be made up by Americans as well as Europeans. Under the present Code (section 78), the trial of a European

British subject before the Court of Session need not be by jury. But, under section 234, an European or American, not being a British subject, had an absolute right to be so tried. The Bill omitted the latter provision.

The power given by sections 433 and 434 of Act X of 1872, to discharge from custody or make over to his relative a person acquitted on the ground of insanity, had been extended, in sections 474 and 475, to the case of persons who, being found to be insane at the time of trial, were committed to custody.

The rules as to the proceedings in case of contempts and other offences affecting the administration of justice applied in the present Code to "civil" Courts, and doubts had been raised as to their applicability to the revenue Courts, which existed in most Indian Provinces. The corresponding provisions of the Bill (sections 476, 478, 479, 480, 482) had been expressly made applicable to revenue Courts, and, where the Local Government so directed, Sub-Registrars would (section 483) be "civil Courts" within the meaning of section 480. The position and qualifications of Sub-Registrars varied in different provinces; but, in some parts of the country, they were believed to be fitted for the exercise of these powers.

Section 177 had been framed so as to allow a Court of Session to charge a person for giving false evidence before itself,—a power of which such Courts were unintentionally deprived by section 472 of the present Code.

Section 487 had been redrawn so as to avoid the difficulty which was felt in determining the meaning of the words "offence committed in contempt of its own authority," which occurred in the corresponding section (473) of Act X of 1872.

Part IX contained certain provisions supplementary to the general rules of procedure contained in the Code. It dealt, first, with the public prosecutor, bail, commissions for the examination of witnesses and special rules of evidence. It then contained certain provisions relating to bonds to keep the peace, for good behaviour, for appearance, &c.; the disposal of property regarding which an offence had been committed; the transfer of criminal cases; irregular proceedings; and, lastly, certain miscellaneous matters.

Power had been given to appoint as public prosecutor, in any case committed to the Sessions Court, a Police-officer not below the rank of Assistant District Superintendent. The entire exclusion of the Police from such a function was, in the opinion of many authorities, inexpedient. With the limitation above described, there would be no fear of intimidation of witnesses or undue influence.

The provisions of the present law as to commissions for the examination of witnesses had been amended in four respects. Where the witness resided in a Native State, power had been given (section 513) to issue the commission to the Political Agent or other local officer representing the British Government. Section 515 required that the interrogatories should be thought relevant by the Magistrate or Court directing the commission. Where a Subordinate Magistrate wished for a commission, he would (section 516) apply to the District Magistrate, and not (as at present) to the Sessions Judge: this would relieve the Court of Session of a duty which could be more conveniently performed by the District Magistrate. And power was expressly given (section 518) to stay the inquiry or trial for a specified time reasonably sufficient for the execution and return of the commission.

Chapter XLIV related to the disposal of property regarding which an offence had been committed. In accordance with a recent rule of the High Court at Bombay, section 528 declared that, when a High Court or Court of Session made an order for the disposal of property, and could not through its own officers conveniently deliver the property to the person entitled thereto, the Court might direct its order to be carried into effect by the committing Magistrate. Orders under this section made in appealable cases would not be carried out until the time allowed for appealing had expired, or, if an appeal was presented in due time, until the appeal was dismissed.

Where an innocent purchaser bought stolen property and restored it to the lawful possessor, provision had been made (section 530) for payment of the price out of money found on the convicted thief. This was in accordance with 30 & 31 Vic., cap. 35, section 10, and it was thought likely to be useful in India.

Section 532 provided, in case of a conviction under the Penal Code, sections 292, 293, 501 or 502, for the destruction of the obscene books and defamatory matter in respect of which the conviction was had. It also provided for the destruction of adulterated or noxious food, drink or drugs in respect of which a conviction was had under sections 272—275 of the same Code.

This chapter also contained a section (533) equivalent to section 534 of the present Code, providing that, whenever a person was convicted of an offence attended with criminal force, and it appeared that by such force any other person had been dispossessed of any immoveable property, the Court might order such person to be restored to possession. In the present Code this provision was misplaced in a chapter (XL) dealing with the preventive jurisdiction of Magistrates in case of disputes as to immoveable property.

Chapter XLVII comprised some miscellaneous matters, of which he would mention the following as new. Power had been given (section 552) to the Local Government to fix places of imprisonment or custody. Moneys (other than fines) payable by virtue of any order made under the Code would be recoverable as if they were fines (section 558). The power to compel restoration of abducted females, which now existed only in the Presidency-towns, had been extended (section 562) to District Magistrates. Power had been given to the High Courts (section 561) to make rules for the inspection of the records of subordinate Courts. And as to miscellaneous criminal proceedings, if any doubt arose as to the procedure to be followed, the Court would be guided by such rules (consistent with the Code) as the High Court might make in this behalf (section 568). The Bill contained no clause equivalent to Act I of 1868, section 5, although similar provisions were contained in each of the Codes now consolidated (X of 1872, section 309, X of 1875, section 107, IV of 1877, section 12). The matter would be provided for by the Bill, which he had mentioned, to amend the Penal Code.

Schedules II and V, which corresponded respectively with Schedules IV and II of Act X of 1872, had been altered so as to adapt them, not only to the Mufassal Courts, but to those of the Presidency Magistrates. The latter schedule now contained no less than 56 forms for most of the proceedings directed or authorised by the body of the Bill. These forms had stood the test of practice in the Presidency of Madras and the Panjáb. He did not know who had framed them; but they seemed to unite brevity with precision. The present Code contained only a set of forms of charges, and nine forms of summonses, warrants, bonds and the instruments incorrectly termed recognizances.

As to Schedule II, the offence of voluntarily causing hurt had been made one for which the police might not arrest without a warrant. A like change had been made as to voluntarily causing hurt on grave and sudden provocation, not intending to hurt any other than the person who gave it. The numerous investigations by the police into charges of "hurt," which the present law rendered necessary, were said to distract their attention from more important duties, and to result in little good to the public.

The offence of adultery, which was now triable only by the Court of Session, had been made triable also by a Presidency Magistrate and a Magistrate of the first class. Enticing married women, which was done only for the purpose of adultery, was now punishable by the Magistrate, and it would seem that adultery should also be punishable by him.

The paragraph relating to mischief by fire with intent to cause damage had been altered in accordance with a proposed amendment of section 435 of the

Penal Code. This alteration had been made in order to check the offence, which was very common in some parts of the country, of setting fire to garnered crops. A cultivator might have the whole of his crop destroyed in this way, and yet, if its value was less than Rs. 100 (as was often the case), he could not obtain the aid of the police to arrest the offender without a warrant from a Magistrate.

And now, having mentioned some of the most important amendments in substance which the new Code proposed to make—of these there were altogether 112—MR. STOKES wished to refer to a recent letter from five of the Judges of the Calcutta High Court, the recommendations of which His Honour the Lieutenant-Governor had unreservedly accepted. Those learned Judges thought that the defects of the present Code could be cured by an amending Act. But the Code, which contained 541 sections, had already been amended by an Act (XI of 1874) of 47 sections. The new amending Act proposed by the Judges would contain at least 200 sections, providing for the 112 amendments in substance to which he had referred, and about ninety necessary amendments of the wording of the present Code. Now, since Act X of 1872, with the amending Act of 1874, contained 588 sections, the result would be for the Mufassal a Code of nearly 800 sections, inconveniently contained in three separate enactments, side by side with a number of outlying Acts and Regulations dealing directly or indirectly with criminal Courts and criminal procedure. For this shapeless mass MR. STOKES proposed to give the whole country one compact Code containing only 568 sections, not "nearly seven hundred," as the High Court Judges had alleged with more zeal than accuracy. The learned Judges also alleged that the new Code was "encumbered with matter connected with the Courts having jurisdiction in the Presidency-towns which related to a very small section of those concerned in the administration of justice." Here, again, was an exaggeration, for of the 568 sections of the new Code, those relating exclusively to the Presidency High Courts and Presidency Magistrates were only twelve in number—namely, 18, 19, 20, 21, 362, 370, 411, 432, 433, 434, 441, 501. There were also a few words in section 486, which gave an appeal to the High Court from a conviction in a contempt case by a Court of Small Causes in a Presidency-town. That was all.

MR. STOKES would have liked to enlarge upon the advantages of having a clear, compact and methodical Code of Criminal Procedure, first, as diminishing expense, delay and uncertainty in applying their admirable substantive law—the Indian Penal Code—for the punishment of offences; secondly, as furnishing a potent instrument of education; and, thirdly, as tending to maintain our intellectual prestige among the quick-witted races over whom we rule in India. But he had trespassed too long on the time and patient attention

of the Council; and he would only say in conclusion, that, excluding the special provisions of the Acts relating, respectively, to Coroners in the Presidency-towns, European British vagrants and criminal tribes, the Bill was now, so far as Mr. Cockerell, Mr. Colvin, Mr. Fitzpatrick and himself had been able to make it, a complete body of criminal procedure. No pains had been spared to render its provisions plain and practical; and, in return, he earnestly asked all competent persons to point out the mistakes and omissions which, notwithstanding the careful and repeated revision it had undergone, they would doubtless discover in so large and complicated a work.

The Motion was put and agreed to.

The Hon'ble MR. STOKES also moved that the Bill be published in the local official Gazettes in English and in such other languages as the Local Governments might think fit.

The Motion was put and agreed to.

NORTH-WESTERN PROVINCES RENT ACT, 1873, AMENDMENT BILL.

The Hon'ble MR. THOMPSON, in the absence of the Hon'ble Mr. Colvin, asked for leave to postpone the Motion that the Bill to amend the North-Western Provinces Rent Act, 1873, as amended be passed.

Leave was granted.

INDIAN PENAL CODE AMENDMENT BILL.

The Hon'ble MR. STOKES introduced the Bill to amend the Indian Penal Code, and moved that it be referred to a Select Committee consisting of the Hon'ble Messrs. Thompson, Gibbs, Paul and Reynolds and the Mover.

The Motion was put and agreed to.

The Hon'ble MR. STOKES also moved that the Bill be published in the local official Gazettes in English and in such other languages as the Local Governments might think fit.

The Motion was put and agreed to.

JHÁNSÍ ENCUMBERED ESTATES RELIEF BILL.

The Hon'ble MR. RIVERS THOMPSON, in the absence of the Hon'ble Mr. Colvin, presented the Report of the Select Committee on the Bill to provide for the relief of Encumbered Estates in the Jhánsí Division of the North-Western Provinces. He wished to state that the modifications and changes

which the Select Committee had thought it necessary to introduce into the Bill rendered it necessary to refer the Bill back, with the Report of the Select Committee, to His Honour the Lieutenant-Governor of the North-Western Provinces. It was not intended to take any further measures for passing the Bill into law until the opinion of His Honour had been ascertained regarding the several amendments which had been made in the Bill, and which diverged a good deal from the proposals which had been originally submitted by the Government of the North-Western Provinces. He had also to add that the action of the Council regarding the further progress of this Bill was stayed by the necessity of referring their proceedings up to date to Her Majesty's Secretary of State for India.

MERCHANT SHIPPING BILL.

The Hon'ble MR. STOKES introduced the Bill for the further amendment of the law relating to Merchant Shipping, and moved that it be referred to a Select Committee consisting of the Hon'ble Messrs. Thompson, Gibbs, Paul, Reynolds and Mewburn and the Mover. The Bill, as he had said when obtaining leave to introduce it, consolidated Act IV of 1875 and part of Act XIII of 1878, with certain substantial amendments which he had described. But it did more than this.

Those Acts of 1875 and 1878 related in part to the suspension and cancellation of Board of Trade certificates to which the provisions of the Imperial Merchant Shipping Acts applied. An examination of the provisions of our Acts in connection with those of the Imperial Acts shewed that our Acts dealt with several matters already provided for by Parliament. This was not desirable. Apart from the question which might be raised as to the validity of our law, where that law was not transcribed *verbatim*, it was inconvenient from a practical point of view that double provisions relating to the same subject-matter should exist side by side. In re-enacting, therefore, the provisions of the Acts repealed by the Bill, an endeavour had been made to restrict its provisions to matters for which the Imperial Acts did not provide and on which it was clear we could legislate. This had necessitated the omission of some and the amendment of other provisions of the present law.

The Bill was, he must confess, a mere piece of patchwork. But this was unavoidable in the present state of the English Statute law on the subject of merchant shipping. He thought, however, that the Bill might be made somewhat more complete by incorporating the unrepealed provisions of Act I of 1859, and if the present Motion were carried, he would ask the Select Committee to incorporate those provisions.

The Motion was put and agreed to.

The Hon'ble MR. STOKES also moved that the Bill be published in the local official Gazettes in English and in such other languages as the Local Governments might think fit.

BENGAL PILOTS BILL.

The Hon'ble MR. STOKES moved for leave to introduce a Bill to give power to arrest persons whose evidence is needed under Act No. XII of 1859 *(to make better provision for the trial of Pilots at the Presidency of Fort William in Bengal for breach of duty)*. He said that the last section of Act No. IV of 1875, which conferred on Courts established for the trial of pilots in Bengal under Act No. XII of 1859 certain powers for compelling the attendance of witnesses, would be repealed if the Merchant Shipping Bill, which he had just introduced, became law. As such a provision was somewhat out of place in a Merchant Shipping Act, it seemed better to re-enact it as a section in Act No. XII of 1859, and the present Bill had accordingly been prepared for this purpose.

The Motion was put and agreed to.

The Hon'ble MR. STOKES also applied to His Excellency the President to suspend the Rules for the Conduct of Business. It was desirable that the Bill should proceed through the Council *pari passu* with the Merchant Shipping Bill, and be referred to a Select Committee identical with that to which the Merchant Shipping Bill had just been referred.

The President declared the Rules suspended.

The Hon'ble MR. STOKES then introduced the Bill and moved that it be referred to a Select Committee consisting of the Hon'ble Messrs. Thompson, Gibbs, Paul, Reynolds and Mewburn and the Mover.

The Motion was put and agreed to.

The Hon'ble MR. STOKES also moved that the Bill be published in the *Calcutta Gazette* in English and in such other languages as the Local Government might think fit.

The Motion was put and agreed to.

FORT WILLIAM MAGISTRATES BILL.

The Hon'ble MR. REYNOLDS presented the Report of the Select Committee on the Bill to provide for the better government of Fort William.

PRESIDENCY SMALL CAUSE COURTS BILL.

The Hon'ble MR. STOKES presented the Report of the Select Committee on the Bill to consolidate and amend the law relating to the Courts of Small Causes established in the Presidency-towns.

The Council adjourned to Friday, the 11th March, 1881.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

CALCUTTA;
The 4th March, 1881.

C. H. L.

Government Central Press.—No 605 L D -11 3-81,—250

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 11th March, 1881.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.G., G.M.S.I., G.M.I.E., *presiding*.

His Honour the Lieutenant-Governor of Bengal, K.C.S.I.

His Excellency the Commander-in-Chief, G.C.B., G.C.S.I., C.I.E.

The Hon'ble Whitley Stokes, C.S.I.

The Hon'ble Rivers Thompson, C.S.I.

The Hon'ble J. Gibbs, C.S.I.

Lieutenant-General the Hon'ble Sir D. M. Stewart, G.C.B.

Major the Hon'ble E. Baring, R.A., C.S.I.

The Hon'ble C. Grant.

The Hon'ble J. Pitt Kennedy.

The Hon'ble H. J. Reynolds.

The Hon'ble G. F. Mewburn.

The Hon'ble B. W. Colvin.

The Hon'ble Mahárájá Jotíndra Mohan Tagore, C.S.I.

TRANSFER OF PROPERTY BILL.

The Hon'ble MR. STOKES presented the third Report of the Select Committee on the Bill to define and amend the law relating to the Transfer of Property.

NORTH-WESTERN PROVINCES RENT ACT AMENDMENT BILL.

The Hon'ble MR. COLVIN moved that the Bill to amend the North-Western Provinces Rent Act, 1873, be passed. He said that, on the last occasion, when the report of the Select Committee had been taken into consideration, he gave a brief explanation of the changes which had been made in the Bill; but, if any hon'ble member wished for any further explanations, he should be happy to give them to the best of his ability.

The Motion was put and agreed to.

FORT WILLIAM MAGISTRATES BILL.

The Hon'ble MR. REYNOLDS moved that the Report of the Select Committee on the Bill to provide for the better government of Fort William be

taken into consideration. He said that the principal change made in the Bill was to transfer to the Governor General in Council and the Commander-in-Chief the powers conferred on the Local Government by the Bill as it was originally introduced. Fort William had never been considered to be under the superintendence of the Local Government; and the Select Committee had, therefore, transferred the exercise of the powers under the Act to the Governor General in Council. There was another slight change in the first section of the Bill, so as to make it clear that sutlers and followers should be amenable to the jurisdiction under the Act, whether they were subject to military law or not. In the next place, the schedule of the Bill had been considerably altered; but the changes which had been made in it were rather of a formal than of a substantive character. It appeared doubtful whether the schedule covered all the offences which were included in the regulations for the government of the Fort which now existed. The wording of the schedule had been somewhat enlarged, and it now covered all the existing Fort-regulations; but, as it appeared necessary to make provision for future contingencies, it was provided that the Commander-in-Chief, with the sanction of the Governor General in Council, might make rules relating, not only to matters included in the schedule, but to other matters of a like nature. Another change had been made in the sixth section of the Bill, with regard to which he should have something to say when he moved the amendment of which he had given notice. At present he begged to move that the Report be taken into consideration.

The Motion was put and agreed to.

The Hon'ble Mr. Reynolds then moved that, in section 6 of the Bill, the words "non-commissioned officer or" be omitted. He said that these words were not in the draft of the Bill as originally introduced, but were introduced because the Committee were under the impression that the military authorities desired that non-commissioned officers should be vested with the power of making arrests without warrant. It had subsequently, however, been ascertained that the military authorities did not desire to press the proposal to invest every non-commissioned officer with this general power, though it would always be in the power of the Governor General in Council to confer upon any non-commissioned officer the right to arrest under this section.

The Motion was put and agreed to.

The Hon'ble Mr. Reynolds then moved that the Bill as amended be passed. The Bill had been published in the Gazette, and the Select Committee were of opinion that the changes made by them were not of sufficient

importance to require re-publication. If the Council concurred in this view, he believed there was no reason why the Bill should not be passed.

The Motion was put and agreed to.

ALLUVION BILL.

The Hon'ble MR. STOKES presented the second Report of the Select Committee on the Bill to define and amend the law relating to alluvion, islands and abandoned river-beds.

DEKKHAN AGRICULTURISTS RELIEF ACT AMENDMENT BILL.

The Hon'ble MR. GIBBS moved for leave to introduce a Bill to amend the Dekkhan Agriculturists Relief Act, 1879, and for other purposes. He said that this very exceptional piece of legislation had been found, in the working of it, to require amendment in several particulars; but the amendments were not of very great importance, with the exception of one, relating to the registration of documents. Some practical difficulty had arisen on this point, and it had been found that it would be quite sufficient, instead of the documents in question being registered and a copy kept in full, if they were simply ear-marked to prevent any falsification after a certain date. In working the Act, the Special Judge appointed for its superintendence brought to notice certain other alterations necessary for the working of the Act, and the suggestions made were considered by the Government of Bombay with the aid of their law officers, and the result was that MR. GIBBS had now to ask for leave to introduce a Bill to amend the Act. Should leave be given to introduce the Bill, he should then further apply to His Excellency the President to suspend the Rules for the Conduct of Business, to enable him to introduce the Bill and refer it to a Select Committee. It was very necessary that the Bill should be introduced before the Council proceeded to Simla.

The Motion was put and agreed to.

The Hon'ble MR. GIBBS also applied to His Excellency the President to suspend the Rules for the Conduct of Business.

THE PRESIDENT declared the Rules suspended.

The Hon'ble MR. GIBBS then introduced the Bill, and moved that it be referred to a Select Committee consisting of the Hon'ble Messrs. Stokes, Thompson, Grant, Colvin and the Mover.

The Motion was put and agreed to.

The Hon'ble Mr. Gibbs also moved that the Bill be published in the *Bombay Government Gazette* in English and in such other languages as the Local Government might think fit.

The Motion was put and agreed to.

FACTORIES BILL.

The Hon'ble Mr. Colvin moved that the Report of the Select Committee on the Bill to regulate labour in Factories be taken into consideration. He said that it would be desirable, perhaps, that he should notice briefly the changes that had been made in this Bill in Select Committee, as there had been no discussion of its provisions since the Report was presented last year.

The first change to be noticed was with regard to the definition of "factory." Those Members who were in the Council at the time when the Bill was introduced would, no doubt, remember that there had been some discussion on the subject of this definition. The matter had been further discussed in the Select Committee, and the conclusion arrived at was that a factory should be defined to mean any premises where work was carried on for not less than four months in the year, with the aid of steam, water or other mechanical power, and where not less than 100 persons were employed at one time. He supposed that the Committee could hardly have framed any definition which would not be open to criticism; but it had been hoped that the definition given in the Bill would include all factories to which it was desirable that the law should apply, and sufficiently exclude all temporary workshops and other places in which children were employed for too limited a time to make protection necessary. It was now urged that the definition went too far in respect of one or two industries; but, if the amendment which the Hon'ble Mr. Rivers Thompson proposed to move should be carried, the definition proposed would, if he recollected rightly, be no longer objected to by any of the Local Governments.

The next point mentioned in the Report was that Crown factories had been brought under the operation of the Act, which followed in this respect the British law on the subject. This had been another subject of discussion when the Bill was introduced, and the conclusion to which the Committee had come on full consideration was, that Crown factories should be brought within the scope of the Act, but that the power to exempt them temporarily, in cases of emergency, should be reserved to the Government. It was quite necessary that such power should be reserved in order to avoid great inconvenience and mischief. It would be sufficient to instance the case of the Mint, and of the powder and gun manufactories in time of war, to show the necessity for such a provision.

He now came to section 7 of the Bill. It would be seen that the Committee had abolished the distinction which had existed in the Bill as originally introduced, between "children" and "young persons," and that the time for the employment of young children had been extended from six to nine hours. He would briefly explain the reasons for these changes. The Bill in its original shape had allowed "young persons" to be employed for eight hours, and "children" for only six, the last-mentioned provision being in accordance with the English law. On closer examination, however, there appeared to be good reasons for extending the time of employment of children in this country. In the first place, it was beyond question that factory-labour in India was not so severe or continuous as at home. Then, at home, a child who worked in a mill for six hours was obliged by law also to attend school for three hours of the day, and he was, therefore, employed in one shape or the other for nine hours out of the twenty-four. In this country, supposing that children were not employed for more than six hours, it could hardly be expected, in the existing state of education, that they would attend any school, because a great many of them would have no school within reach which they could attend, and because, if they had, it was extremely improbable that their parents would send them to it. If they were not allowed to remain in the factory, they would either be turned out to absolute idleness or to seek for manual labour elsewhere. A further consideration, and one entitled to much weight, was that, if the labour of children were limited to six hours, great facilities would be given for evading the law. Mills in this country never worked for less than twelve or fourteen hours, and it would be impossible to prevent a child who had worked six hours in one factory from going to work six hours in another. He said that it was impossible to prevent this, because any elaborate system of registration and inspection, by which a check might be put upon it, would lead to worse evils than the evasion of the law itself. Those were the grounds on which the hours for the labour of children had been extended, and the majority of the Committee thought that nine hours was not too great an extension, provided that one hour's interval was allowed during that time for food and rest. This extension having been determined on, there was no longer any object in maintaining a distinction between young persons and children.

A few words would not be out of place as to the manner in which it was intended that the Act should be worked. The great object of the Committee had been to reduce to the utmost possible degree all interference with the employers of labour. With this object the Bill provided that, if an Inspector found a child employed in any factory whom he believed to be under the prescribed minimum limit of age, or a person employed as an adult whom he

believed to be a child within the meaning of the Bill, he might prohibit the employment of such child, unless the employer could produce a certificate showing the child to be of proper age, from a duly empowered surgeon, and that such prohibition should remain in force until the necessary certificate was obtained. If the mill-owner employed such child or person after the prohibition without obtaining a certificate, he would be liable to prosecution. It would be seen from this that no mill or factory owner would be exposed to trouble from the law, unless he acted in neglect or defiance of a warning. As in mills and other factories the work was generally carried on for twelve hours and often for more, it would be necessary to employ the children in shifts. The Inspector, therefore, had only to know to what shift a child belonged, and to ascertain that a shift never worked for more than nine hours, in order to satisfy himself that no child was being employed for more than the time allowed.

There was one point in the Bill connected with the provision of an hour's interval in the day's work which had been the subject of some criticism, and which MR. COLVIN might briefly explain. The Bill provided that the times at which the intervals from labour should be allowed, and the length of each interval, should be fixed by the Local Governments for each factory after ascertaining, as far as possible, the existing practice in such factory and the wishes of the occupier thereof. It had, apparently, been understood by some of those concerned that the Committee meant that the Local Government should, of its own motion, regulate and determine for each factory the intervals to be allowed for rest and food. But what the Committee had intended, and w t the Act allowed, was that in each factory the owner should himself determine e period or periods of rest and give notice thereof to the Inspector, and, if t re were no reason to object to them, that the Local Government should de ure that those should be the intervals allowed. That was the intention of the Ac and MR. COLVIN thought that the Committee could scarcely have gone farther to meet the wishes of the mill-owners. It was necessary that the intervals allowed for food and rest should be given at fixed and stated times; otherwise, it would be impossible to ascertain by any inspection whether the provisions of the law on this subject were being complied with.

A further point to be mentioned was that the Bill gave power to the Local Government to require a register to be kept of children employed in a factory; such a provision would be necessary to the successful working of the law. He did not think much explanation was needed in regard to the provisions of the Bill relating to the fencing of machinery; this part of the Bill had met with general approval. He might, however, by way of showing that such a provision was not unnecessary, refer to a statement he had received through the

kindness of the Commissioner of Police in Calcutta, showing the number of accidents in mills in the town and its suburbs during the year 1879. In the town there had been 19 accidents and three deaths, and in the suburbs 21 accidents and one death. It was clear, therefore, that provisions for the proper fencing of machinery were not wholly uncalled for.

He had thus far turned his attention to what the Committee had done: it might be desirable to say one or two words regarding what the Committee had not done. It had not provided for other matters relating to factory-control, such as ventilation and sanitation. Both in Bombay and Madras, opinions had been given in favour of doing something in this direction; but, after full deliberation, the Committee thought that no such necessity had been shown to exist as would justify their proposing to add anything on these subjects to the general Act which they were considering. The Committee were informed that, in Bombay at any rate, the Municipal Act allowed the Government sufficient power in these matters. Even if that should not be the case, they still were of opinion that these matters had better be dealt with by local legislation, and that there was no occasion to insert them in the present Bill, which was intended to apply to the whole of India.

The Hon'ble MAHÁRÁJÁ JOTÍNDRA MOHAN TAGORE said that he had had the honour of serving on the Select Committee, but he was free to confess that he was not altogether in favour of the Bill which was now before the Council. He was humbly of opinion that any authoritative intervention between labour and capital in a country where manufacturing industry was in its infancy was not at all desirable. It appeared, however, that, in Bombay, competition among the factories had come to such a stage that legislative interference in the interest of the operatives was considered by the Local Government to be very much needed, though, as he understood, there was considerable difference of opinion among the outside public. On the other hand, the Bengal Government and intelligent public opinion here held that such a measure was not only unnecessary, but that it would be positively injurious. European capital and European energy were being gradually drawn into this country to its immense advantage, and any uncalled for legislative intervention between labour and capital was, it was believed, sure to operate as a check in that direction, and such a result could not but be considered as a misfortune to the country. The best course, no doubt, under existing circumstances, would have been to have maintained the permissive character of the Bill as it was originally framed, and to have allowed discretion to the several Local Governments to extend it to their respective Provinces, according to their local necessities. He might here observe that, in matters of far greater importance, Local Govern-

ments were allowed the fullest exercise of their discretion, and surely a question of this nature could have been safely left in their hands. The majority of the Select Committee on this Bill had, however, decided that it would be unjust to impose restrictions on Bombay, and allow other provinces to enjoy exemption from them; that was to say, because the peculiar condition of one province needed a certain law, the rest of the country must, perforce, be subjected to it, though the result might be injurious; or, in other words, to suit the requirements of one province, other provinces must suffer. He confessed that he did not see the justice of this decision. India was a vast country, and the circumstances and conditions of the different parts varied as much, perhaps, as their geographical position. What might be good for one part of the country could not necessarily be good for another, and in the practical administration of the country the Government fully recognised this principle. It was contended that the restrictions were so moderate that they could not but be needed in any part of the country. In Bengal, in the absence of any great competition, self-interest led the capitalist as well as the labourer to work in harmony and with mutual good-will, and any legislative interference, he submitted, was wholly uncalled for. But forced legislation of the kind contemplated might, on the contrary, create friction and discord, by tempting both classes to stand too rigidly on their respective legal rights, and thus, perhaps, strangle a young industry which had opened the means of livelihood to thousands of the poorer classes of this province. He would, therefore, strongly, but respectfully, deprecate such superfluous legislation. In conclusion, he begged to observe that, if the amendments of which he saw notice had been given by the Hon'ble Mr. Thompson were carried, they would, no doubt, to a certain extent, modify the effect of the Bill; but he must be permitted to say that he should prefer if the original permissive character of the Bill be preserved in its integrity.

His Honour THE LIEUTENANT-GOVERNOR suggested that it would simplify matters if further discussion was postponed until the amendments were moved, of which notice had been given.

His Excellency THE PRESIDENT agreed with His Honour the Lieutenant-Governor, but observed at the same time that he could not rule any member to be out of order who desired to speak on the Motion then before the Council.

The Motion was put and agreed to.

The Hon'ble MR. RIVERS THOMPSON said the Council would observe that there were several amendments in his name which he would move in the order in which they came. He had listened with attention to the remarks which had fallen from his hon'ble friend Mahárájá Jotíndra Mohan Tagore, and,

though he did not wish at this point to continue the discussion which had been raised as to the principle of the Bill, he would, prior to introducing his amendments, submit that it would be in the recollection of the Council that, when the proposal was first made for a measure for regulating labour in factories, it was of a very much more stringent nature than anything which was now in the Bill. At any rate, the Government of India were in possession of a great deal of information in the reports from the different officers, which, if they were all carried out, would have imposed restrictions of a very wide and large character, not only as regards labour in factories, but in connection with ventilation, sanitation and other matters, which might have entailed frequent and detailed inspection and interference. Even now, after the report of the Select Committee, when two years had been given to the consideration of the measure, in proposing to consider the report the Government of India had taken into consideration many points which were brought to notice in the later reports in connection with the Bill; and no one would pretend to say that the introduction of the amendments which he was about to move would not materially and very largely reduce the nature and extent of the supervision to be exercised. Everything he would now urge in the way of amendments was in the direction of relaxation and reduction of the restrictive character of the Bill, in the desire to meet the reasonable wishes of those who objected to a very stringent measure, while still maintaining the view of the Government that some kind of legislation was necessary to protect those who could not protect themselves. With these remarks he would proceed to move the amendments.

The Hon'ble MR. RIVERS THOMPSON then moved that, in the short title to the Bill, the figures "1881" be substituted for "1880."

The Motion was put and agreed to.

The Hon'ble MR. RIVERS THOMPSON then moved that, to the first section, the following clause be added, namely:—

"and shall come into force on the first day of July, 1881."

He said that it was contemplated originally that as soon as the Bill was passed it should come into operation. But, considering the novel character of the Bill in this country, and that arrangements would have to be made for giving effect to the law, and that millowners, agents and managers would need to acquaint themselves with the requirements of the Bill, it was thought that a few months' time should be given to make the necessary preliminary arrangements.

The Motion was put and agreed to.

The Hon'ble MR. RIVERS THOMPSON then moved that, in the definition of "factory," after the word "premises," the words "(other than premises situated on, and used solely for the purposes of, a tea or coffee plantation)" be inserted. He said that the suggestions to exempt tea and coffee plantations from the operation of the Bill came from Madras and Assam. Sir Steuart Bayley, the Chief Commissioner of Assam, in reporting upon the Bill, represented that it would be very desirable to exclude tea-estates in Assam from the operation of the law, because, practically, in such cases the work was done almost entirely out of doors; it was not confined to the limits of a close factory; and, if the law was extended to tea-factories in Assam, it would be applied to work done under very different circumstances from the labour requred in cotton, jute, and other factories in India.

The Hon'ble Member read extracts from Sir Steuart Bayley's report in support of his contention, and concluded by saying that the considerations which applied to labour in tea-estates were in the same sense applicable to coffee-plantations. The Government had reports from competent authorities in Madras to this effect.

The Hon'ble MR. MEWBURN said he thought that indigo-factories should be included in this amendment. Including the process of packing, the manufacturing season in indigo-factories extended over four months, and, as the Bill now stood, those factories would come under the operation of the Act. It appeared to him that the same arguments which applied to the exemption from the Bill of tea-estates would apply to indigo-factories, and the exemption was the more desirable because there was an increasing amount of machinery now being used in the indigo-industry.

His Honour THE LIEUTENANT-GOVERNOR supported the suggestion made by his hon'ble friend Mr. Mewburn. He had, in fact, himself intended an amendment of this sort, but he had consulted one of the leading indigo-firms in this city as to whether the exception, in the definition, of factories which were not worked for more than four months would be sufficient to exclude indigo-factories, and the reply he got was that the actual process of manufacture was very seldom carried on beyond ninety days; and the assumption was that the Select Committee, in making that exception, had the case of indigo-factories in view when they adopted the period of four months. But since then notice had been given of an amendment including the processes of transport and sale, and it appeared that the adoption of that amendment might bring the whole manufacturing process in indigo-factories within the scope of the Act, and he, therefore, considered it necessary specially to exempt indigo-factories from the operation of the Bill. He did not understand that it was ever intended to

bring the manufacture of indigo under the Act; it was carried on chiefly in open places and often in the open air, and it seemed to be a sort of labour which had no relation to labour in ordinary factories, and no complaint had ever been received which would warrant interference with the indigo-industry. He believed machinery was now used for beating up the indigo in the vats, where formerly labourers would continue up to their waists in water for hours, and machinery had also been used for some time for pumping water into the vats, but in neither case would children be brought into contact with machinery.

The Hon'ble MR. COLVIN remarked that the Select Committee had not intended to include either indigo-factories or cotton-ginning factories within the scope of the Bill; in point of fact, it was thought that the exception as to four months would exclude both those descriptions of manufactories. But if, as he understood from what had fallen from the hon'ble Mr. Mewburn, the period of four months mentioned in the definition was not sufficient to except them, he knew of no reason why they should not be expressly exempted from the operation of the Bill.

The Hon'ble MR. RIVERS THOMPSON having declared his willingness to accept the suggestion of the hon'ble Mr. Mewburn, the amendment was put and agreed to in the following modified form :—

"that in the definition of factory, after the word premises, the words '(other than indigo-factories or premises situated on, and used solely for the purposes of, a tea or coffee plantation)' be inserted."

The Motion was put and agreed to.

The Hon'ble MR. RIVERS THOMPSON then moved that, in the same definition, after the word "use," the words "transport or sale" be inserted. He said that these words were proposed to be included with the acquiescence of His Honour the Lieutenant-Governor of Bengal, and were necessary to secure the application of the Act, not only to the manufacture of every article for local use, but also for articles intended for transport or sale: they gave completion to the section, and were necessary to secure that full effect should be given to the operation of the law.

The Motion was put and agreed to.

The Hon'ble MR. RIVERS THOMPSON then moved that, for the words "eight years" and "fourteen years," wherever they occurred, the words "seven years" and "twelve years," respectively, be substituted; and that, for the words "eight or fourteen years," in section 16, the words "seven or twelve years"

be substituted. He said that it was an important amendment. It reduced the age of the employed from eight and fourteen years, the period during which protection was afforded under the Bill, to seven and twelve years, respectively As hon'ble members would see, the proposal was all in the direction of leniency towards the employer; and as it had been represented to the Government that the age of seven was more in consonance with the practice of the employment of children in this country, and that the reduction of the age would remove some difficulties in giving effect to the law, the Government was willing to concede the point.

The Motion was put and agreed to.

The Hon'ble MR. RIVERS THOMPSON then moved that, for the word "shall," in the first line of section 3, the words "may in its discretion" be substituted. He said that section 3 of the Bill related to the appointment of Inspectors. The Bill as it stood required the Local Government to appoint an Inspector for carrying out the purposes of the Act, and in default of such appointment the Magistrate of the district, in virtue of his office, would be the Inspector of the district. As originally contemplated, the second clause of the section was intended to meet the case of factories outside the Presidency-towns. If a single factory existed in a district, it would have been unnecessary and undesirable to appoint a special Inspector for work which might be as usefully and satisfactorily done by the Magistrate of the district and his subordinate officers. It had been represented to the Government of India, by His Honour the Lieutenant-Governor of Bengal, that, in carrying out the Act in Calcutta and its neighbourhood, he would desire very much to be left more free in the selection and appointment of the agents he would employ in carrying out the law. In his opinion, the requirements of the law would be more satisfactorily attained with less objection as to interference, and in a way which would go far to meet any opposition which might be raised by the proprietors and managers of mills, if the work of supervision and inspection was in the hands of an officer of Government who had the general executive authority in the town and its suburbs. and who would be under the orders of the Local Government in carrying out the details connected with this measure. It seemed to MR. THOMPSON that, even if the section had remained as it now was, it would always have been in the power of a Local Government to proceed by way of appointing the Magistrate of the district to do this duty. Although the first clause of the section made it obligatory upon the Local Government to appoint an Inspector, it said that the Government should appoint such person as it might think fit to perform the duties of that office; and he did not know whether it would not have been quite competent, if the Local Government thought the Magistrate to be the best person to be so appointed, to say that the Magistrate of the district should

be, within the limits of his jurisdiction, an Inspector of factories for the purposes of the Act. However, to make it quite clear that option would be given to the Local Government in this matter, the Government of India was willing to accede to the wishes of the Lieutenant-Governor by eliminating the obligatory provision of the first clause of the section and leaving it to the discretion of the Local Government either to appoint a special Inspector, or to invest the Magistrate of the district with power to supervise the working of the law.

His Honour THE LIEUTENANT-GOVERNOR thought it well to explain why he laid stress on the alteration of section 3. He, and he thought everybody on this side of India, had the strongest possible objection to the appointment of a special officer as an Inspector. They felt that it would be very difficult to find proper persons to fill the office, and, if such appointments were made obligatory, the Government would in all probability soon be brought into a state of antagonism with the owners and managers of all the factories in the Province. No doubt, it was supposed that the option of appointing a Magistrate to be the Inspector was included in the section, but he could not believe that that was the real intention of the section; for in that case a distinction would not have been drawn between Inspectors specially appointed and Magistrates acting as such in default of such special appointment: the section would not have gone on to say that, where no Inspector was appointed, the Magistrate of the district should be *ex officio* the Inspector. If, under the section as it stood, the Local Government had the option of appointing a Magistrate to be the Inspector, it would entirely meet his views, but he was advised that that was not the legal construction of the section. HIS HONOUR thought the Magistrate was the proper person to be entrusted with the duties of Inspector under the Act, and he was sure that no owner of a factory would raise any objection to casual inspection of a factory and its machinery by a responsible and highly-paid officer of Government like the Magistrate, and the Government would feel satisfied that the inspection so made would be an honest and good and proper inspection. He hoped and believed that the amendment now proposed would fully satisfy the manufacturing interests in Bengal. He considered it of great importance that this question should be settled: it had now been agitated for five years, and he hoped that this would be a real and lasting settlement of the question, and not a mere postponement of the agitation. He thought this section as it was now proposed to be amended would answer all the purposes of the Government, and afford quite sufficient security to the manufacturing interests of the community, to the employer and labourer.

His Excellency THE PRESIDENT remarked that, in his judgment, he thought that it would be perfectly open to the Local Government, even if the section had not been altered, to have appointed a District Magistrate to act as an

Inspector. He did not wish to put any interpretation of a legal nature upon the point, because he should thereby be going beyond his proper sphere in the presence of legal gentlemen much more competent to speak than he was; but he thought it was perfectly clear that the first paragraph of the section left it entirely free to the Local Government to appoint any person whom it thought fit, and, consequently, as it appeared to him, the Local Government, if it wished, might in every case appoint a District Magistrate to discharge the duties of Inspector. However, as he found that there was a doubt upon that subject in the mind of his hon'ble friend the Lieutenant-Governor, he was quite willing to agree to such an amendment as would clear up any possibility of doubt upon the point, especially as his hon'ble friend had pointed out the difficulty which would arise in this country in obtaining really competent men, except at great cost, to fill the individual and special office of Inspector under the proposed Act.

His Excellency, therefore, had no difficulty in acceding to the amendment suggested by his hon'ble friend, and which he believed only made more clear what would have been in the power of any Local Government under the Bill as sent up by the Select Committee.

He had only one more remark to make, and that was that, while he was perfectly willing to agree to that amendment, he was certainly not prepared to give up inspection altogether, because to do so would be to give up that without which all experience showed that any measure of this kind would be a perfectly dead letter. As to the persons who exercised the inspection, His Excellency was most anxious to leave that to the discretion of Local Governments, being quite confident that, when the Bill was passed, they would put its provisions into fair and proper execution.

The Motion was put and agreed to.

The Hon'ble Mr. Kennedy withdrew the Motion that, to section one, the following words should be added, namely :—

"except the territories for the time being administered by the Lieutenant-Governor of Bengal"

He said that, after the amendments which had been made in the Bill, and after His Honour the Lieutenant-Governor of Bengal had expressed his willingness to accept the Bill as it now stood, he did not feel justified in moving it.

The Hon'ble Mr. Kennedy then moved that, in section two, in the definition of "factory," at the end of the first clause, before the word "and," the words "composed wholly or in part of cotton" be added. He said that there seemed to him to be some kind of evidence that, in cotton-factories, evils had sprung up in the treatment of the children who were employed in them.

He did not say that the evidence was very large, but still the authorities at Bombay seemed to be satisfied that a case had been made out with respect to the factories there, all of which, or almost all of which, were cotton-factories. As far as he could discover, in the manufactories established on this side of India, no such complaints seemed to have been raised or substantiated. At one time it was proposed that the extension of the Bill should be entirely in the discretion of the Local Government, so that where evils occurred they could be repressed. Where it was necessary that the Bill should be brought into operation, there the Act without further legislation might have been enforced. That, however, seemed to have been displeasing to the inhabitants of Bombay. There the industry was one which, at any rate in the opinion of the local authorities, did require legislation. But here the manufacture of cotton existed to a comparatively very limited extent. The Bombay people protested vigorously and earnestly against the partial application of the law. They maintained that they would have been subjected to a disadvantage while the manufacturers of Bengal would be exempt from any restriction; in point of fact, that there should have been perfect equality in capacity of construction between the two Presidencies. MR. KENNEDY was not sure that that was an absolutely conclusive argument. If Bengal had so worked its labourers that regulation of factories was not necessary, it was hard that its manufactures should be made to bear a part of the inconvenience caused by the greater rapacity of the Bombay mill-owners; and, as far as he could discover, the owners of manufactories here had not given ground to say that these restrictive regulations were required. The effect of his amendment would be that, leaving equality between the two Presidencies, the legislation would only affect those who were supposed to have made it necessary. Besides, there was this great and unusual advantage for the future quiet and well-being of the manufacturers here. Manufactures, other than cotton, which were conducted in this country, were not in general likely to interfere with any great and powerful manufacturing interest in England. There could be little doubt that the manufacturers of England had looked upon the cotton-manufactures of India with by no means a friendly eye. He did not say that motives of personal interest actuated those who suggested restrictive measures of this kind, but hon'ble members knew how much personal interest tended to induce persons to take a strong view in any matter; and one could easily understand that restrictive measures in respect to the employment of children would affect the owners of cotton-mills in Manchester when those children were permitted to be employed without restriction in rival establishments. MR. KENNEDY had no personal interest in any species of manufacture in India. He had seen too frequently the result of the tendency to intervention on the part of the legislature in India to make him think it a very safe mode of investment for himself; he had, therefore, studiously avoided

it; but he was anxious to see, as far as possible, the industry of the half-starved population of the country developed. He thought that, where the legislature found wages at the miserable rate that they were in most parts of India, anything which could give greater employment they ought carefully to avoid discouraging; and therefore it was that he was anxious, as far as possible, to reduce the action of the Bill, which could hardly, in his mind, fail to exercise a dangerous influence on the further extension of manufactures.

The Hon'ble MR. GRANT said that the amendment before the Council seemed to him to raise the whole question whether the Bill should be permissive in its character or compulsory, or, as he preferred to say, universal in its application. He had been much impressed with what had fallen from his friend Mahárájá Jotíndra Mohan Tagore as regards the industries of the country, but, as a member of the Select Committee, MR. GRANT could assure the Council that the considerations which had been brought forward by the hon'ble member had not been lost sight of. It had been thoroughly recognized that the population of this country was almost entirely dependent upon the produce of the land; some, indeed, thought it was fast outgrowing the resources of the land; and the dread was always present that, unless some timely remedy was provided, nature would restore the balance by some terrible calamity. The Committee had been fully alive to these considerations. But there were other important matters to be thought of on the other side of the question. In the first place, there were representations from the Bombay Millowners Association and other public bodies to which Mr. Kennedy had referred, and with His Excellency the President's permission he would read extracts from some of them which, the Council would see, went further than his hon'ble and learned friend might have led the Council to understand. The Puná Sarvajanik Sabhá thus put the case:—

"Such permissive enactments of measures by the Imperial legislature are always fraught with great disadvantages. The measure, if necessary in principle, must be made obligatory upon all provinces of India. The adoption of the other course leaves the responsibility of introducing such measures upon the local executive authorities, which responsibility ought not to be laid upon them; and, what is worse, it burdens particular provinces by placing them at a relative disadvantage to the other provinces of the Empire. If the measure is only called for by the circumstances of one province, the local legislature, influenced as it is more directly by local opinion, should be entrusted with the responsibility of enacting a purely local law. The necessity of protecting children from overwork is, if real, universal, and should be recognized and legislated upon as such. Even as it is, the law will not affect mills established in the Native States of Haidarábád, Indore, Bhaunagar and other places, and will thus favour these mills at the expense of those in British territory. To increase the partial character of the enactment advisedly, by making it forcible to apply the measure to Bombay and not to Madras or Bengal, will still further aggravate this injustice. In the general interests of the country,

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we submit the permissive character of the enactment must be expunged and the measure made universally applicable to all provinces."

Then there was a similar representation from the Millowners Association, subsequent to the publication of the Select Committee's report :—

"The Bill, as originally proposed, would have been a grave injustice to the Bombay factories, which would have been placed under a serious, if not ruinous, disability in their competition with other places in India, into which it was apparently the intention of the Local Governments not to introduce the proposed law. The views of the Select Committee of the Council of the Governor General, therefore, on this point have the entire approval of the Association."

It seemed to MR. GRANT that these were pleas which, in common fairness, the Committee could not pass over. The term "permissive" had a very seductive sound, conveying a sense of fair dealing and adaptation to local circumstances, which gained for it much popular favour. But it must not be forgotten that permission to some meant additional restrictions to others, and in no case could it be right to permit what the law declared to be wrong. If it was wrong that children should be worked more than a certain number of hours on one side of India; if it was wrong that machinery should remain unfenced and unguarded ; similar practices must equally be condemned in Calcutta and everywhere else. These were some of the considerations which prevailed with the Select Committee in recommending that the operation of the Bill should be made compulsory or universally applicable.

There was only one other point, as to the origin of the Bill, to which he (MR. GRANT) would wish to refer. He could find no trace of its alleged origin in representations from the Manchester Millowners. He would refer to a debate which took place in the House of Lords in 1875 on the motion of Lord Shaftesbury. It would appear that attention had been first drawn to the subject in a report upon factories by Mr. Redgrave, and very possibly Miss Carpenter's mission to India had something to do with the agitation which arose on the subject. She, no doubt, discovered that some of the factories in India were open to the objections which had been brought against the unrestricted employment of children in English factories. The result was that a commission of enquiry sat at Bombay, and took a great deal of evidence and discovered the existence of some abuses. There had been no such commission on this side of India, and it was quite possible that, if there had been, it would not have discovered the abuses which existed in Bombay, it was also very possible that in some of the inferior factories the management, if not so bad as in Bombay, might have been found to be no better. No doubt some of the better factories in and near Calcutta were as well managed as was possible. He himself had the pleasure of visiting some of these factories last year; and

certainly nothing could have been better kept or more satisfactory to the eye. But human nature was very much the same in Calcutta as in Bombay; and it would be very sanguine to expect that there were no abuses in factory-management here. He would only add that, if any body found reason to complain of the present Bill, he had only to compare its provisions with those which existed in any other part of the world in order to satisfy himself of the very mild character of the present legislation.

The Hon'ble MR. RIVERS THOMPSON said that, though the amendment of his hon'ble and learned friend was directed simply to confining the application of the Bill to cotton-factories, in his speech, and in the observations which had fallen from the hon'ble member who had just spoken, the general question had been raised as to the permissive or compulsory character of the Bill. MR. THOMPSON had very little to add as regards the question of principle to what the last speaker had already stated to the Council. If the hon'ble member's amendment was carried, it was obvious that, while the law would have a general application in Bombay, where cotton-factories abounded, its operation on this side of India would be extremely limited. Now, it was contended by the Bombay Government, on representations which appeared clear and convincing, that the exclusive or partial application of the Bill to any one place or presidency would be an unreasonable application of the law. The objection taken by the learned mover of the amendment, that there were factories on this side of India to which no kind of restrictive legislation should be applied, might be generally true on the assumption that the work in factories here was humanely and properly conducted. But he (MR. THOMPSON) wished to remind the Council that the Bill in its present form was one of the most lenient and slightly restrictive which could possibly be framed; and that, in dealing with the necessity for protecting children of tender years against over-work and oppressive work, the Council had good justification for the procedure in the several representations which had been made while the Bill had been under consideration; and, if the fact was admitted that in many places young children were over-worked and confined to their labour for hours beyond reasonable limits, the Bill, if it was to be enforced at all, should be applied everywhere where children of those years were employed. If the mills on this side of India had not been proved to be badly conducted,—he believed from all he had heard that they were conducted in the most satisfactory manner,—still the very fact that children between the ages of seven and twelve were employed in such factories, the medical testimony being very conclusive as to the hours beyond which such children could not be allowed to labour without injury to their health, made it the duty of Government to exercise such interference as was needful to regulate their labour in factories of every

description. Dr. Blake, an officer of large medical experience, found a case in which children were made to work for thirteen hours a day, and the time allowed for rest and meals was insufficient. He found a large percentage of the children in a reduced condition, the percentage of such children being three times larger in factory-children than in others. MR. THOMPSON thought that no one would dispute the fact that children of the age to which the Bill applied were much too young to be employed on continued labour in mills at the discretion of employers. The eagerness of severe competition on one side, and the cupidity of parents on the other, were both incentives to continuous labour in factories; and now that arrangements were being made in some places for keeping mills at work for the whole 24 hours by the aid of the electric light, he thought it right that children in this country should be protected by law from any such continued labour as would injure their health. He must oppose the amendment.

The Hon'ble MR. GIBBS desired to say a few words in regard to the Bombay Commission to which reference had been made. The appointment of that Commission was necessitated because, on that side of India, cotton-mills had started up with much greater rapidity than in the other provinces, and it was thought necessary to have an inquiry of that nature to see whether there were really any of the very objectionable practices which had prevailed in the mills in England. He was, however, happy to say that, having himself inspected some of those mills, and perused the reports received from time to time, he believed that, in the great majority of them, the arrangements were anything but what could be objected to. He thought his hon'ble colleague, Major Baring, was present at the time when he (MR. GIBBS) took Lord Northbrook to see the working of one of those mills; and, on coming out, His Lordship said that, if all the Bombay mills were similar to the one he had inspected, no factory-legislation would be needed. The real fact was that an Act of this description was required for those small factories where the small amount of capital and other such causes made the owner get as much as possible from the labourers who were employed in it; but he believed that there were a large number of highly respectable mills where the work was very properly conducted. The children employed in those mills were as happy as possible, and in some of them there were very good schools in which the children were kept engaged for two or three hours a day. One of the difficulties connected with this question was the practice of little children being carried with their parents to the mill. It was impossible for the people, at least on the other side of India, to leave their little children at home; necessity made the women, if not the men, take their whole families with them, and the result of the children being taken to the mills involved their getting put

to some light work which they otherwise would not have been put to; and for that reason, if not for any others, it was necessary to have some proper rules carried out for regulating the work of children. It was for the inferior classes of factories that the operation of the Act was more especially called for and Government inspection considered necessary.

His Excellency THE PRESIDENT said that he felt himself entirely in accord with the view taken by his hon'ble friend Mr. Thompson. He did not think that it would be possible to accept the proposed amendment. He had no doubt that it was brought forward in the most perfect good faith by Mr. Kennedy, but he could not help thinking that it would be regarded at Bombay as another mode of practically exempting, at all events, Bengal from the operation of the Bill. We had decided not to do that; we had made considerable concessions with the view of meeting the feelings and opposition of the manufacturing-industry in Bengal, and he did not think that, under those circumstances, it would be desirable to go back from what had been thus practically determined; for that, in HIS EXCELLENCY'S opinion, would be the result if the proposed amendment were adopted.

He had only one word more to say. His hon'ble friend Mr. Kennedy had alluded to the desire expressed by the manufacturers in England for the adoption of legislation of this kind in India. He was quite aware that Mr. Kennedy did not for a moment attribute the course taken by the Government of India to any undue pressure from that quarter, and HIS EXCELLENCY could only say for himself that, having come out here not very long ago from England, no motive of that kind had anything whatever to do with the support he gave to the Bill, and that he felt it his duty, in the office which he had the honour and the great responsibility of filling, to look at such questions mainly from an Indian point of view, and to regard all subjects in the interests of this great country with whose government he was connected. He could truly say, therefore, that that was the motive which guided him in the support which he had given to the Bill. The subject was not a new one to him. It was one with which he had been occupied in England for a long time since the commencement of his public life, certainly not in the interests of the manufacturers, but in those of the working classes. He himself believed that the practical result of legislation on the subject had been beneficial to the manufacturers as well as to the labourers; at all events, the fears entertained in the beginning by the manufacturers in England, and which were very similar to those now entertained in India, had completely died away, as he knew from long and intimate intercourse with manufacturers in his own part of the country; and he could not help thinking that, if the Bill was worked as he trusted it would be worked,

it would be found to place no injurious restrictions on manufacturers in this country, while it would afford a reasonably fair protection to the children of the working classes, and, as regards the fencing of machinery, to all persons employed in mills of any description. That was the sole reason why he gave his support to the Bill, and he should be exceedingly grieved if any notion got abroad that the Government of India, in this respect, were in the least degree influenced by a mere desire to meet any wish, if such wish did exist, on the part of manufacturers in England to place restrictions upon their competitors in this country. That was not the view he took at all events, and he was quite sure that none of his colleagues were influenced by it in their support of the Bill. He regarded the measure entirely upon its merits, and he believed it would be found to confer great benefits upon both classes—the employers and the employed.

The Hon'ble MR. KENNEDY wished merely to say, in reference to the observations which had fallen from His Excellency the President, that His Lordship was not responsible for the original introduction of the Bill, and that, though he could not doubt His Lordship's statement that he and his colleagues were acting quite in accordance with their conscientious convictions as to the necessity for the present legislation, he remained under the impression that the original inception of the measure had been much influenced by Parliamentary pressure.

The Motion was put and negatived.

The Hon'ble MR. KENNEDY then moved that, to the definition of "employed," the following words should be added, namely:—

"Provided that no child, one or both of whose parents is or are employed in the factory, shall be deemed to be employed unless wages are paid for the work which he performs."

He said that this amendment stood in rather a different position. Their hon'ble colleague Mr. Gibbs had just alluded to the fact that a large number of women who worked in the mills had no mode of providing for the care of their children while they themselves were so engaged. The result was that the children were taken to the mills, where the natural imitative instinct of children and their restlessness would almost infallibly induce them to take part in what was going on. It would be very difficult to prevent children, if permitted to go into the mill, from doing something that might be called work. It would be hardly possible, unless the children were altogether excluded from the mills and turned loose into bázárs, to avoid the owner being occasionally technically guilty of the offence of having them employed under

circumstances which the law prohibited. One was not always sure of the discretion of the persons who had to carry out the law. Of course, the Magistrate or other authority was bound to act under the law and to carry it out; but where there was an unintentional breach of the law, where it was not done wilfully, a discreet person would take care to overlook it. But one could not always depend on such discretion. One case which he would mention was perhaps within the recollection of His Honour the Lieutenant-Governor. The commander of a river-steamer, going along one of the great rivers of India, saw 20 or 30 coolies shivering on a sandbank in the middle of the river, with the river rising at the time. He sent his boat and rescued the men, who were half-starved and had before them a speedy prospect of being drowned. He took the men along with him, and reported their arrival to the Magistrate of the nearest station. The Magistrate, in his zeal for the protection of the coolie, took him out of the steam-boat and sent him for trial to Calcutta for having coolies on board his steam-boat who were not entered in his manifest or register. He was bound to say that, when that case came into the hands of the then Advocate General, he very speedily dealt with the case. In legislation of the restrictive character of this Bill, it was desirable, as far as possible, to provide for cases which might naturally occur, and where a little indiscretion on the part of the officer concerned might cause considerable inconvenience, and especially in places where the inspecting officer would not be the Magistrate of the district, but a special Inspector. It seemed to be a principle of human nature that, where a person was appointed for carrying out a particular crotchet, he would be sure to find cases demonstrating the necessity for his existence; if there were no infringements of the law, the existence of the Inspector was hardly justified, and therefore it seemed to him that the Council ought, as far as possible, to guard against the possibility of children, who would otherwise be left to idle in the bázár or left at home without the protection of the parent, being held to be subject to the provisions of the Act, at a time when they were under the eyes and protection of their parents, unless they were persons whose labour was remunerated.

His Honour the LIEUTENANT-GOVERNOR said it seemed to him that this amendment was intended to provide for a matter of some difficulty. No doubt, there were cases in the papers before the Council showing that it was the habit of women labouring in factories to bring with them to the mill children who were too young to labour for wages and too young also to be left at home, and these children were undoubtedly employed in some slight and unimportant work in the factory,—helping their parents, holding baskets, and doing work as an amusement rather than a labour. He did not think it was the intention of

the Select Committee to bring these children under the operation of the law. At the same time, the definition in the Bill did seem to include such children, and it seemed to His Honour that the amendment of his friend was really called for. The managers of mills should not be held liable to penalties for work done in this way.

The Hon'ble MR. COLVIN said that, as a reference had been made to the motives which actuated the Select Committee, he should explain that the case of the children mentioned had not been overlooked, but that the Committee had decided the question in the way in which the Bill dealt with it, because it was considered that to admit any such amendment as the hon'ble member proposed would lead to much greater inconveniences than those which that amendment was intended to prevent. It would be quite impossible for any Inspector to decide whether a child was working for wages or not, as long as it was possible for two or three rupees to be added to the wages of the father or mother on account of work done by a child. Again, the amendment, as it stood, would allow any number of children to be employed in piece-work, and in that case it could not well be said that they were working for wages, even if the money were paid into their own hands. Looking, therefore, to the inconveniences which would arise from framing the Bill in the manner proposed by this amendment, he thought that the Select Committee had good reason to believe that much less mischief was likely to result from leaving the section as it stood than from altering it in the manner proposed. He thought it better, therefore, that the Bill should be left as it stood.

The Hon'ble SIR DONALD STEWART said that, while he was inspecting a harness-factory recently, he happened to observe the very circumstance to which the hon'ble Mr. Colvin had just alluded. A father was accompanied by three or four sons of ages varying from twelve to six or seven; their work was piece-work; the children got no wages at all, and the father received himself the entire sum due for the labour of the family. This, he thought, was an illustration in favour of leaving the Bill as it now stood, and he was told that state of circumstances was common in many establishments throughout the country.

The Hon'ble MR. RIVERS THOMPSON thought the acceptance of this amendment would entirely vitiate the working of the Act for reasons which had been given by the hon'ble Mr. Colvin and exemplified by Sir Donald Stewart. As the Bill stood, all children up to the age of twelve years would be under the protection of the law whether they worked for wages or not. The object of the amendment was to exclude those children from the operation of the Bill who accompanied their parents to the factory but received no wages. Such a

system would only entail confusion, and would end in all such children being put to work. The Council could not, in legislating, provide for every special case to secure the good sense and tact and temper of those who had to administer the Act, and the instance of the river-steamer, referred to by his hon'ble and learned friend, went only to show that there were sometimes in the world very foolish people, and that one could not always rely on the good sense of the police and other authorities in dealing with public matters. He thought that the amendment which it was now proposed to introduce would in the end result in a great number of children being employed on no wages, but, though not working for wages, they would be subject to all the overwork and hardship which it was the object of the Act to repress.

His Excellency THE PRESIDENT observed that he had certainly taken the same view of the case as his hon'ble colleague Mr. Thompson. It appeared to him that the amendment, if carried, would practically render the Bill nugatory altogether, especially as it seemed to be the habit of persons in this country to take their children to the factory with them. Under those circumstances, it would be almost impossible, as it appeared to him, ever to get a conviction under the Act, if the proposed amendment were adopted. Of course, it was impossible to be certain that there would not be found from time to time official persons who would act in a very foolish manner; but HIS EXCELLENCY thought that no legislation could provide against such a case of exceeding folly as that quoted by his hon'ble friend Mr. Kennedy, and which could not seriously be used as an argument against legislating in the sense which the legislature of the country might on the whole think right. It must be borne in mind that no prosecution under this Act could be instituted except under the authority of the Inspector, and that the Inspector was either appointed by the Local Government, or else he was, as it was desired should be the case in Bengal, a District Magistrate It was also provided, in section 3, that the Inspector "shall be officially subordinate to such authority as the Local Government may, from time to time, indicate in this behalf," and it was thus distinctly pointed out that the Inspector should take his orders from the Local Government. HIS EXCELLENCY was sure that Mr. Kennedy did not think that any Governor or Lieutenant-Governor in India would be likely to act in the manner in which the Magistrate to whom he alluded acted, and certainly he (Mr. Kennedy) could not think that anything of that kind would be permitted under the firm rule of his hon'ble friend the Lieutenant-Governor of Bengal. It seemed to HIS EXCELLENCY, therefore, that to adopt the proposed amendment would be to render the Bill altogether a sham It was said of the late Mr. O'Connell that he used to boast of being able to drive a coach and four through any Act

of Parliament; but His Excellency was of opinion that it would not require all the knowledge and legal acumen of Mr. O'Connell to drive a coach and six through this Act if the amendment of his hon'ble and learned friend were adopted.

The Motion was put and negatived.

The Hon'ble Mr. Kennedy then moved that the first clause of section 16 be omitted. He said that was a provision which, though it was copied from various English Acts, seemed to him not to be so necessary or proper here as in England. It was an illustration of the mistakes likely to occur from forcing on one state of society the law suitable for another. In England there was the assurance of a good system of registration of births, so that any millowner or employer could ascertain with sufficient certainty what the ages of the persons were whom he wished to employ. Here they had only the very uncertain testimony of the parents, which the Magistrate might not always accept; and the medical evidence handed to the Select Committee showed that there was the greatest possible difficulty, and no possibility of certainty, in forming an opinion as to the age of any particular child, at least if it were to remain living. If one had the opportunity of making a *post mortem* inspection, considerable certainty might be attained; medical men might form an approximate opinion from the appearance of the dentition; they might form a conjecture from the general form and development of the body, but no certain deduction could be drawn from such an examination. The only true and infallible test was the appearance of the bones of the pelvis, the examination of which could only be made by means of a *post mortem* examination,—testimony to that effect was given by more than one medical officer,—and he deemed the interest of humanity hardly would sanction this test. Under these circumstances, it did seem that, if the employer had formed a reasonable impression from such examination as he could obtain that the child had attained a certain age, it should indemnify him where, as in this country, there were no certain means by which the age of the child could be proved. As he had already pointed out, in England no person need accept an employè whose age was not to be gathered from some of the documents which the modern registration-system required on the birth of every child; and, therefore, the matter stood on a different footing in this country. If the opinion of the Court should be formed on some evidence, medical or other sufficient test, there might not be so much objection; but the mere opinion of the Court, without any reason for such opinion, ought not, in the circumstances of this country, to shift the burden of proof on the defendant.

The Hon'ble MR. RIVERS THOMPSON said that, in the absence of a complete and scientific system of registration of the birth of children in this country, he admitted that the question of deciding the exact age of a child was one of some difficulty in practice, but he supposed hon'ble members would agree that the desired information could be obtained for the purposes of the Act without going to the extreme length which his hon'ble and learned friend had suggested. The provision of the Bill which was under consideration was taken from the English law, and was therefore proof of the practice in England in such cases. He believed, too, it was not exceptional in cases of this kind that the burden of proof should be thrown on the employer of labour in the factory. Under the fourth section of the Bill a prosecution might be instituted for employing any person whose employment had been prohibited until the age of such person had been certified to be above the minimum age. The question would then come before the Court on the application of the Inspector under section 16; but even then it went no further, unless, in the opinion of the Court, which pre-supposed some kind of examination, there was any doubt, and then the burden of proof was thrown on the employer. It was only at this stage of the proceedings that the certificate of a surgeon competent to give an opinion was required to arrive at a satisfactory conclusion as to the ages of children between the ages of seven and twelve years. MR. THOMPSON thought that no great hardship or burden was thrown upon the employer by such a procedure.

The Hon'ble MR. STOKES said that the clause in question was copied from the English Act of 41 Victoria, and a similar clause had been in force in England since 7 & 8 Vic., c. 15, was enacted. This, surely, tended to shew that the clause was needed for the proper working of a measure like the present Bill. No doubt, the general rule was that the prosecution should give evidence in support of the allegation against the accused. But the necessity of giving this evidence had been found, in the great majority of criminal cases, not only useless but inconvenient, and Parliament had, therefore, often interfered by expressly enacting that the burthen of proving authority, consent, lawful excuse and the like should lie on the defendant. About forty instances of this were given by Mr. Taylor in the seventh edition of his well-known work on Evidence. And there were instances of the same kind to be found in the Indian Statute-book. For example, in Act VII of 1880, the adaptation of Plimsoll's Act passed by this Council last year, section 5 threw the burthen of proof on the defendant shipowner or shipmaster who sent or took an unseaworthy ship to sea. So, under the Criminal Procedure Code, section 89, the burthen of proving reasonable excuse lay upon persons accused of failing to give information

of certain offences. No doubt, as Mr. Kennedy had observed, owing to the existence in England of legal registers of birth and baptism, it was easy to prove the age of most children. But nothing could be easier than the mode pointed out in the second clause of section 16 of the Bill, if only the word "of" were substituted for "under" in line 13, or the words "or over" were, as Mr. Kennedy himself proposed, inserted after that word. All the defendant would then have to do would be to obtain a declaration from the certifying surgeon, and that declaration would be admissible in evidence.

The Hon'ble MR. COLVIN said that he only wished to add one argument to those which had been already advanced by his hon'ble friend Mr. Rivers Thompson on the subject, and, in order to make that clear, he must refer again to the mode in which the Act was to be worked. The Act, as he had explained, was to be worked in this way. The Inspector was to visit factories, and, where he found a child who appeared to him to be employed in contravention of the law, he was not to prosecute, but merely to prohibit the employment of such child until a certificate of age could be obtained. If the owner of the factory, after that prohibition, continued to employ the child without a certificate, he would be doing so when he had good reason to believe that he was in the wrong, and it would not be unfair to lay upon him the burden of proving that he was in the right. He should not have neglected to obtain the certificate, unless he was prepared to prove the child's age otherwise. The great majority of prosecutions in which the ages of the persons employed came into question would be cases of the kind which he had referred to, namely, the employment of children in contravention of the law. But in all cases in which questions of age arose, though there was not in India any complete system of registration of births, an employer could always protect himself by the production of a certificate from the certifying surgeon, and then he would be in as good a position as an English millowner who had a copy of the registry of births.

The Hon'ble MAHÁRÁJÁ JOTÍNDRA MOHAN TAGORE supported the amendment. The difficulties which existed in this country in producing evidence of the age of children were very great, especially in regard to the lower classes, who had no horoscope to prove the age of their children; therefore, he thought that, to throw the onus of proof in respect to the age of children upon the owner of a factory, was to require him to do that which was almost an impossibility. He thought that the first clause of the section would operate as a great hardship on the employers of children in this country.

His Excellency THE PRESIDENT said that, so far as he understood it, this was a question in which the physical mode of judging of the age of children

was much the same in India as it was in England, and that the difficulties were of the same kind. His hon'ble friend Mr. Kennedy had quoted the answers given by certain medical men to questions put to them. Members of Council would observe that the question put to those gentlemen was this—whether, in the absence of proof of date of birth, there was any rule or law of nature by which the age of a child could conclusively be certified to be within the age of seven and half, eight or nine years? And to this question more than one replied—"If you produce me the child, I will give you an opinion. I cannot tell you the age of the child conclusively, but I can do so approximately." Of course, it would be impossible to say that that child would be seven years old on the 11th of March, 1881, but it was quite possible to say that the child, for all practical purposes, might be considered to be either seven or eight or twelve. His hon'ble friend Mr. Kennedy referred to the English system of registration. His Excellency thought, if his memory served him correctly, that, when the English Factory Act was first enacted, in 1841,—and this clause would be found in the original Act,—the registration-system was not in perfect operation at the time, and that was the reason why originally the system of certificate by surgeons was adopted. Of course, as the system of registration had grown in England, the use of the surgeon's certificate had died out; but originally the English manufacturers were subject under their Act to precisely the same liability as it was proposed now to extend to this country; and, as his hon'ble friend Mr. Stokes had pointed out, there were a great number of cases both in English and Indian legislation where the same principle of throwing the burden of proof on the defendant had been adopted. Among others, if he was not mistaken, one was the English Passengers' Act, which was an Act of somewhat the same description as the Factories Act; and it would also be found that in many other Acts of a similar description, regulating the relations between employers and employed,—certainly in the Customs Act, regulating the relations between the Government and the importers of goods,—the same principle had been adopted. Under those circumstances, His Excellency thought that the Bill should stand as it was now sent up by the Select Committee.

The Hon'ble Mr. Kennedy said, in reply, that he thought the great majority, if not all, of those exceptional cases, in which the burden of proof was thrown on the defendant or the person accused, were those in which the thing to be proved was within his own personal knowledge, which he was the person who knew about or ought to have known about, and which other people could not know, such as offences under the Customs Act, and the like. But here the opinion of the certifying surgeon, which could always be

obtained by the Court, ought to be sufficient to warrant the burden of proof being thrown on the prosecution; for MR. KENNEDY's recollection of the Criminal Procedure Code and of the Evidence Act was that every certificate of a medical officer was, for most purposes, evidence in criminal cases. Therefore, he thought the first portion of section 16 of the Bill was unnecessary, and there was in the second portion of the section sufficient to throw the burden of proof on the millowner if the medical officer of the station, after examination, was of opinion that the child was under the specified age.

The Motion that the first clause of section 16 be omitted was put and negatived.

The Hon'ble MR. KENNEDY then moved that, in the second clause of section 16, after the word "under," the words "or over" be inserted.

The Motion was put and agreed to.

The Hon'ble MR. KENNEDY withdrew the Motion that the following section be added to the Bill, namely:—

"Certain children to be deemed to be eight years old."

"20. Any child which has cut the four central permanent incisor teeth shall be deemed to have attained the age of eight years."

The Hon'ble MR. RIVERS THOMPSON moved that the Bill as amended be passed.

The Hon'ble MR. REYNOLDS said that, as a member of the Select Committee, he was unwilling to give a silent vote on this question, especially as he had felt obliged to dissent from the report which had been presented by the Committee. He believed he would not be in order, at this stage of the discussion, in offering any remarks on the principle of the measure before the Council. He would therefore confine what he had to say to the Committee's report, and especially to the important change which had been introduced into the first section of the Bill.

This change made the Bill applicable to the whole of British India. As the draft formerly stood, the only part of the Bill which applied to the whole of British India was the harmless statement that this Act might be cited as the Factories Act, 1880. The other sections were only to apply to those provinces to which they might be extended by the respective Local Governments.

He entirely agreed with the action of the Select Committee in doing away with the permissive character of the Bill. As a matter of principle, it seemed

to him extremely objectionable that the application of a measure of this kind should be made to depend on the individual opinion of a Governor or Lieutenant-Governor. And it was easy to see that in practice the permissive character of the Bill would be more nominal than real. Suppose (to put an entirely hypothetical case) the Lieutenant-Governor of Bengal were anxious to put the measure in force in these Provinces, but the Governor of Bombay resisted its introduction into the Western Presidency. The inevitable result would be an outcry from the Bengal millowners that they were unfairly handicapped; the Government of India and the Secretary of State would be unable to resist the appeal; and the Governor of Bombay, however reluctant he might be, would find himself compelled to give way and to authorize the introduction of the Act.

There was another argument which had seemed to him to point in the same direction. There was a very general opinion, at any rate outside this Council Chamber, that this legislation had been urged upon the Government of India from two very different and indeed opposite quarters,—that the voice was the voice of Exeter Hall, but the hand was the hand of Manchester. If there had been any foundation for this belief, it would follow that the instigators of the measure would not be satisfied with the mere passing of a permissive Bill; but would put pressure on the Government to enforce the Act in every part of the country in which a mill or a factory could be found. His Lordship had informed the Council that this opinion was unfounded, and he (MR. REYNOLDS) did not, therefore, desire to lay any stress on this argument. But, on every ground, he thought that the Select Committee were right in saying that the application of the Act ought not to be made to depend upon the discretion of any Local Government.

But, if the Bill was to be made compulsory, this made it all the more necessary that its operation should be confined to those provinces (if such there were) in which it was really required. There was some evidence before the Council to show the necessity for factory-legislation in Bombay. If the Council were satisfied on this point, an Act might have been passed for Bombay, or this measure might have been transferred to the Bombay Council for consideration. But in the Lower Provinces of Bengal he believed that the public voice was absolutely unanimous in saying that such an Act was not required. Now, this was not merely the selfish outcry of interested persons. The Native newspapers in Bengal (and all honour to them for it) were never backward in pointing out cases of what they thought to be oppression and wrong. It might be that they often evinced more zeal than discretion, that they acted upon incomplete or incorrect information, and that they sometimes imputed blame where none was

deserved. But, if factory-work in Bengal really involved such evils as the promoters of this Bill would have them believe, if the hours of labour were unreasonably long, if children were tasked beyond their strength, would the Press have been silent on the subject? Take an analogous case which recently occurred,—the case in which some benevolent persons called upon the Government to interfere to prevent European seamen being made to work in the sun during the hot season. No complaint was made by the seamen themselves; but when attention was once called to the matter the public voice unanimously declared that this was a hardship which ought to be redressed; shipowners and ship-captains themselves supported the call for interference, and a Bill to remedy the evil was introduced into the Bengal Council, and was passed without a single dissentient voice. Now, contrast this case with the criticisms which the Bill now before the Council had elicited. On the one hand, they had men disregarding their own interests in the cause of humanity, and supported in doing so by the unanimous voice of the press and the public; on the other, they had an universal condemnation of this measure as mischievous and unnecessary. Was mercantile enterprise more selfish on land than it was on ship-board? Were the opponents of this Bill confined to millowners and to shareholders in spinning companies? Were the remonstrances of such bodies as the Chamber of Commerce and the British Indian Association to be set aside as interested outcries? How did they account for the fact that in one case protective legislation was welcomed, while in the other it was repudiated? He confidently asserted that it was because in one case the grievance was real, while in the other it was imaginary.

Holding these opinions, MR. REYNOLDS would of course have been glad if this Bill could have been confined to Bombay. But he admitted the practical difficulty of passing such a measure for a single Presidency. He recognized the jealousies and heart-burnings which it would excite, and he acknowledged the duty of the Supreme Government to hold the balance with an even hand between the several Provinces of the Empire. It seemed to him of more practical importance to modify and soften down the objectionable features of the Bill, than to pass for Bombay a stringent law which perhaps might afterwards be extended, in an unmodified form, to Bengal. The amendments which had been accepted by the Council seemed to him calculated to reduce to a minimum the annoyance and interference with business which were inseparable from legislation of this kind; and, though he was not satisfied that any sufficient case had been made out for the enactment of a factory-law for Bengal, still, as the amendments he had referred to had been accepted, he did not intend to offer any opposition to the passing of the Bill.

His Honour the LIEUTENANT-GOVERNOR said that, as he had from the first opposed the Bill, believing that not the slightest ground existed for legislation in regard to the control of labour in the provinces under his government, he thought that he ought to state in a few words his willingness to vote for the passing of the Bill as now amended. Had the proposal been to pass the Bill as amended by the Select Committee, he should have felt it to be his duty to vote against its passing; for he believed that it would have been unjustifiable, and that it would have been very mischievous in its working. He had, however, represented his objections to His Excellency the Viceroy, and great concessions had been made in the direction which he desired. Admitting that some measure was required in some parts of the country, and that, for Imperial purposes, it was necessary to make the law one of general application, he believed that the amendments just carried, on the motion of Mr. Thompson, made the measure as little harmful to the industrial interests of Bengal as possible, and he must express his acknowledgments for the concessions made. He did not believe that any millowner would object to the occasional inspection of his factory by a Magistrate of standing and experience, and that they would accept the amended Bill. HIS HONOUR could only say that he would endeavour to see that the Bill was loyally and honestly worked in the interests of the employers and labourers alike.

The Motion was put and agreed to.

BENARES FAMILY DOMAINS BILL.

The Hon'ble MR. COLVIN moved that the Report of the Select Committee on the Bill to amend Regulation VII of 1828 be taken into consideration. He said that this Bill, as he had explained when he obtained leave to introduce it, had two objects principally in view. The first of these was to bring the law into accordance with the procedure which had gradually grown up within the family domains of the Mahárájá of Benares during the last fifty years.

Its other object was to ascertain and declare the law in force in the family domains, as those parganas were to be exempted from the operation of the Scheduled Districts Act and the Laws Local Extent Act. The Bill as now amended stated precisely what the law would be for the future in the family domains, and, in doing this, it made no change in the existing law, except in one rather important matter which he would shortly explain. The state of the law in the family domains after this Bill was passed would be as follows :—first, in relation to a certain portion of the matters which had been entrusted to the Mahárájá; that was to say, in respect of all matters connected with the realization of rent and revenue, the law would be regulated by the principle and spirit of the enactments for the time being in force in the North-Western Provinces,

and also by the letter of those enactments, so far as the letter should be applicable, and as the Local Government, with the concurrence of the Mahárájá, might direct. This concurrence of the Mahárájá was the point to which he had referred as important. The Mahárájá had never at any time previously exercised any control over the legislation relating to the family domains, and this privilege, which it was now proposed to confer upon him at the recommendation of the Government of the North-Western Provinces, was a matter of pure favour and grace, to which no claim could be shewn. The privilege was restricted to the laws relating to the collection of rent and revenue. In respect of all matters which had been entrusted to the Mahárájá, other than the realization of rent and revenue, his administration would be regulated by the principles and spirit of the laws in force in the North-Western Provinces, and by the letter of such rules as the Local Government might make. The Mahárájá's opinion would be taken in respect of such rules, but his concurrence would not be necessary. In respect of all matters relating to the general, civil and criminal administration of the Province, not only the spirit but the letter of the law in force for the time being in the North-Western Provinces would apply. MR. COLVIN had said that the law had been precisely declared in the Bill; he wished he could have added that it had been declared in a manner that was perfectly clear and readily intelligible. Unfortunately, this could not be done by a mere amending measure, and he was free to confess that the provisions of the Bill were somewhat complicated, and that the law might have been made much more plainly intelligible if it had been possible to repeal and re-enact Regulation VII of 1828. The Local Government, however, did not think that course desirable, and the Committee were unwilling to press it. The substance in such a case was more important than the form, and the law, as set forth in the Bill, was not really doubtful, though the statement of it in the shape of amendments of the old Regulation appeared obscure.

The only further observation he had to make was that, as the Bill stood now, it had been generally accepted by all the authorities concerned; he thought, therefore, that the Council might safely be asked to pass the measure.

The Motion was put and agreed to.

The Hon'ble MR. COLVIN also moved that the Bill as amended be passed.

The Motion was put and agreed to.

OBSTRUCTIONS IN FAIRWAYS BILL.

The Hon'ble MR. STOKES presented the Report of the Select Committee on the Bill to empower the Government to remove or destroy obstructions in fairways, and to prevent the creation of such obstructions, and moved that it

be taken into consideration. He said that the Bill had been considered by the four Local Governments which it specially concerned, and had been generally approved by them as desirable and sufficient. Some few suggestions had been made and adopted. Thus, the Select Committee, in order to remove difficulties which had been felt as to the scope and object of the Bill, had limited its operation to obstructions in fairways leading to ports in British India. A section had also been inserted, corresponding to section 13 of the Indian Ports Act, and providing for the payment of compensation to persons who might suffer damage from the removal or prohibition under the Bill of obstructions (such as fishing-stakes) which they might, by long usage, have acquired a right to maintain or create. Each set of stakes was, relatively to the means of the fishermen, a valuable property, and necessary for the deep-sea fishing on which their earnings largely depended; and, in one instance mentioned by the Bombay Collector of Salt-revenue, the value of a small row of stakes which had been placed by the joint exertions of a number of poor fishermen, and removed under the Indian Ports Act, had been found to be Rs. 1,200. The Committee had also inserted a section to provide that any action which might have been taken by the Government before the Bill became law in any of the matters to which the Bill related should be deemed to have been taken under it. These were the only changes which had been made, and, if no hon'ble member proposed an amendment of the Bill, MR. STOKES had, under the rules, the right to move that the Bill be passed. As the season for placing fishing-stakes off the coasts of Bombay had, he believed, commenced, it was desirable that the Bill should without delay be brought into force in that Presidency.

The Motion was put and agreed to.

The Hon'ble MR. STOKES then moved that the Bill be passed.

No amendment being proposed, the Motion was put and agreed to.

The Council then adjourned *sine die.*

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

CALCUTTA;
The 11th March, 1881.

C. H. L.

Government Central Press—No. 623 L D—6-4-81.—260

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House, Simla, on Wednesday, the 13th April, 1881.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.G., G.M.S.I., G.M.I.E., *presiding*.
His Excellency the Commander-in-Chief, G.C.B.
The Hon'ble Whitley Stokes, C.S.I., C.I.E.
The Hon'ble Rivers Thompson, C.S.I., C.I.E.
The Hon'ble J. Gibbs, C.S.I., C.I.E.
Major the Hon'ble E. Baring, R.A., C.S.I.
Colonel the Hon'ble G. T. Chesney, R.E.
The Hon'ble C. Grant.

INDIAN PAPER CURRENCY ACT AMENDMENT BILL.

The Hon'ble MR. STOKES moved for leave to introduce a Bill to amend the Indian Paper Currency Act, 1871. He said that there was at present no paper currency which was a legal tender in British Burma. Notes of the Calcutta Circle were used to a limited extent in the chief towns, and occasionally notes of other circles were used, but there was no circle of issue in that important Province. Great inconvenience had been felt by the mercantile classes from this want; and in the year 1872 the question of establishing a circle of issue in Burma was before the Government of India. The Indian Paper Currency Act of 1871, however, rendered it necessary to declare every town (other than Calcutta, Madras or Bombay) in which there was an office of issue to be, for the purposes of the Act, situate within some Presidency. Had, therefore, a circle of issue been established in Burma, it would have been necessary to declare the place of issue to be situate within one of the Presidencies of Fort William, Fort St. George and Bombay. The result would have been that, under section 9 of the Act, the notes of the Burma Circle would have been payable at the office or offices of issue in Burma, and also at the Presidency-town of the Presidency (probably Fort William) within which the town of issue had been declared,

for the purposes of the Act, to be situate. Now the nature of the commercial transactions between Burma and India was such that, under those circumstances, it would have been unwise to establish a circle of issue in Burma. At particular periods of the year large remittances of money were made between Calcutta and Rangoon. The average yearly import of gold and silver into British Burma between 1873 and 1878 was Rs. 1,48,51,650. The average export was Rs. 34,26,078. With the exception of an insignificant fraction, these transactions were with India, and the great bulk of them with Calcutta; and if the Burmese notes were payable at Calcutta, the Government might be put to considerable inconvenience and expense in providing cash to meet the notes. The question was accordingly allowed to remain in abeyance.

The rapid increase of the trade of Burma had again caused the question to be brought before the Government of India. The best authorities were agreed that Burma could no longer do without a paper currency, but that the Burmese notes should be payable only at the office of issue and not at any Presidency-town. The public would thus enjoy most of the conveniences of a paper currency: the undertaking would probably prove a financial success; while the Government would not be obliged to undertake the exchange business of British Burma.

The amendments in the Paper Currency Act proposed in the Bill had for their objects—first, to create a Commissioner of the Department of Issue at Rangoon; secondly, to make the towns of issue in Burma independent of the Presidencies; and, thirdly, to render the paper issued at any town in Burma payable only at the office of issue.

Although the notes would be compulsorily payable only at their respective offices of issue, the same accommodation would of course be given at all treasuries to holders of notes as was given in India. Treasuries would, he presumed, receive all notes in payment of any Government demand, and would cash all notes when convenient. Travellers also would, he supposed, usually be accommodated. The Deputy Accountant General, British Burma, thought that the Burmese would readily accept a paper currency in substitution of a silver currency alone, for the latter had many drawbacks—such as cumbrousness and the difficulty, expense and sometimes danger, of conveying coin from place to place. The Agent in Rangoon of the Chartered Mercantile Bank concurred, grounding his opinion on the fact that the Burmese were comparatively wealthy, and were a spending, not a hoarding, people. The money they received so largely

for their produce was largely spent at a later period of the year: they held it for a short time only: they would therefore soon learn to appreciate the advantage of having it in a light and portable form.

Major the Hon'ble E. BARING said that he had nothing to add to the remarks made by the Hon'ble Mr. Stokes. It appeared to him that the Bill was a desirable one; and he presumed that it would now be published in the Government of India and the Local Government Gazettes, and that we should thus have an opportunity of learning what were the views of the public regarding it.

The Hon'ble MR. STOKES explained that the publication of the Bill would take place in the usual course after it had been introduced at the next meeting of the Council.

The Motion was put and agreed to.

SINDH INCUMBERED ESTATES ACT AMENDMENT BILL.

The Hon'ble MR. GIBBS moved for leave to introduce a Bill to amend the Sindh Incumbered Estates Act, 1876. He said that his observations on this motion would also apply to the subsequent motion, which stood in his name, for leave to introduce a Bill to amend the Broach and Kaira Incumbered Estates Act, 1877. The Council would be aware that in 1876 an Act was passed called the Sindh Incumbered Estates Act, and that in 1877 a similar Act was passed to enable the Government to arrange the debts of Taluqdárs of the Broach and Kaira districts. Both of those Acts were, more or less, founded on a previous Act passed by the Bombay Council in 1862 for the Ahmadábád Taluqdárs. The working of that Act had been found to be beneficial; the necessities of the Taluqdárs in Kaira, Broach as well as in Ahmadábád, and also of the zamíndárs in Sindh, required some extraordinary provisions to be made in order to clear them of their debts, and for that purpose those Acts were passed and became Acts Nos. XIV of 1876 and 1877. In the practical working of these Acts, which was under the charge of an officer called the manager, it was found that, while Government advanced money to pay off creditors, there was a considerable amount of difficulty and unnecessary trouble caused by the Government taking a special mortgage in every case for the money thus advanced; and it was pointed out by the Government of Bombay that "the legislature did not, it would seem, contemplate when those enactments were passed that Government might find it expedient to advance money on the security of the estate at a

fair rate of interest in order to enable the manager to compromise and discharge at once some or all of the debts due to private creditors. Had this been contemplated, it is probable that some provision would have been inserted, both allowing this arrangement and directing that the management should continue under the Acts until the debt so incurred to Government is paid off. This, in the opinion of this Government, is the nature of the amendment which is now necessary."

To effect this, a correspondence took place between the Governments of India and Bombay; and the result had been that the Legislative Department had prepared those two short amending Bills.

The money which had hitherto been borrowed had been regarded as a liability incurred to Government in respect of the property under management, within the meaning of section 10 of the Act. This view, however, was based on an erroneous conception of the law; and, as the Act stood now, the only way to secure advances made by Government was by mortgaging the indebted estate. It was objected that as soon as the debts were paid off, the estate was released from management, and that Government would then only have the security of an ordinary mortgage for the advance. It was proposed, therefore, to amend the Act by enabling the manager to borrow money from Government, and by providing that the estate should not be released from management until the money so borrowed was repaid with interest. This would be effected by slight additions to sections 23 and 25. By other amendments the management was made to extend to the debt which might be incurred to Government by the manager borrowing money, and the manager was directed, in submitting his liquidation-scheme, to show in it the amount which he proposed to borrow from Government, and the way in which he proposed to repay it. As the management could not terminate till the whole advance was repaid, there was ample security for its repayment. That was the principal object of those two Bills.

There was also another small amendment, especially with regard to the Sindh Act, allowing a further period of six months from the passing of the present amending Act, to enable people to come in; but he was inclined to think that a similar provision would have to be made in the other Act also, and a reference would be made to the Government of Bombay on this point.

The Hon'ble Mr. Rivers Thompson said that he was not sure if he had understood his hon'ble friend's remarks correctly. The correspondence to which

he had referred had occurred in the Home and Revenue Department. It was understood that the advances made by Government to liquidate the debt were secured upon the estate, and that the Act provided that the managers should realize what was due to the Government. It had, however, been held by the Legislative Department that as the law stood this could not be done without a mortgage in each separate case; and, considering the number of the estates, the execution of a deed of mortgage in each would, in the opinion of the Bombay Government, increase the difficulty of management very much. Was it to do away with that necessity that the amendment of the Act was intended?

The Hon'ble MR. GIBBS said that that was one of the objects of the measure.

The Motion was put and agreed to.

BROACH AND KAIRA INCUMBERED ESTATES ACT AMENDMENT BILL.

The Hon'ble Mr. GIBBS also moved for leave to introduce a Bill to amend the Broach and Kaira Incumbered Estates Act, 1877.

The Motion was put and agreed to.

EXCISE BILL.

The Hon'ble MR. STOKES moved for leave to introduce a Bill to consolidate and amend the law relating to the Excise-revenue in Northern India, British Burma and Coorg. He said that the Bill was, in the main, a re-enactment of the Excise Act, 1871, in a shorter and, it was believed, a clearer form.

His Excellency THE PRESIDENT enquired if the Bill repealed the whole of the Excise Act.

The Hon'ble MR. STOKES replied that a part of the Act was already repealed by the Opium Act of 1878, and that the Bill repealed the rest of it.

The Hon'ble MR. STOKES continued:—The only substantial changes of importance which the Bill introduced were two, a greater restriction in regard to ganjá and other intoxicating products of the Indian hemp plant, especially in British Burma; and an enhancement of the penalties for certain breaches of the Excise-law. As regards the former, the amendment of the law proposed for

British Burma would practically amount to a prohibition of the use of these intoxicating drugs, except for medicinal purposes, in that Province. This was advocated by the Chief Commissioner on the following grounds—

His Excellency THE PRESIDENT :—"Was that Mr. Aitchison ?"

The Hon'ble MR. STOKES :—"Both Mr. Aitchison and Mr. Bernard were in favour of the change."

The Hon'ble MR. STOKES continued :—It was advocated on four grounds—

(1) that these drugs, particularly ganjá, were far more injurious to health than opium ;

(2) that at present they were unknown to the Burmese themselves, or, at any rate, had not come into use to such an extent among them that they would feel deprived of a luxury if their supply were summarily stopped ;

(3) that such drugs were already forbidden in the Arakan Hill Tracts, and that the prohibition had worked well ; and

(4) that they were, for the most part, used only by immigrants from India, chiefly Madrasis, and, in the opinion of the Chief Commissioner, these persons deserved no special consideration in the matter.

The alteration of the law in this particular for other Provinces was of much less importance. It consisted in the reduction of the weight of ganjá and bháng which might be sold by a retail vendor or be possessed by a private person from a quarter of a ser to five tolas, the same weight as was permitted in the case of charas. As to ganjá, it was stated by a high authority that the quantity now allowed was much greater than was necessary, considering how noxious was the drug, and how small a weight was sufficient to meet the daily requirements of an ordinary smoker. The effect of the large quantity now allowed was to encourage and facilitate smuggling and the illegal transport of the drug.

The enhancement of the penalties prescribed for offences against the Act had been advocated by certain of the Local Governments, on the ground that the persons who commonly committed such offences were unable to pay a fine, and that they did not care about being put into the civil jail—in fact, such confinement was rather a luxury to them than otherwise; and imprisonment without hard labour was really no punishment to them at all. There was no doubt that large

frauds were committed on the excise-revenue; that one of their chief causes was the lightness of the penalties attending their detection, and that, till severer penalties were prescribed, the revenue would be inadequately protected. The Bill accordingly gave power to sentence to imprisonment of either description extending to six months in lieu of, or in addition to, fine in certain cases, and in other cases substituted imprisonment in the criminal jail for imprisonment in the civil jail.

The Hon'ble MR. RIVERS THOMPSON said that he might mention that the cultivation of ganjá had all along been prohibited in British Burma; but, notwithstanding this prohibition, from the facility with which the drug could be smuggled into the Province, frequently difficulties had arisen. It had been brought to light that, although the cultivation of ganjá did not prevail in the country, there was no penalty against the use or possession of it; and, therefore, the only way that it could be controlled was by employing the preventive officers to seize the article before it could be brought on shore, and by confiscating it. These measures were not always successful; and the fact that the drug was often smuggled into Burma by the native troops from Madras and Bengal, and that the post office even was used for delivering packets of the drug in different parts of the country, rendered it necessary that the law should be made more stringent.

The Motion was put and agreed to.

CENTRAL PROVINCES LAND-REVENUE BILL.

The Hon'ble MR. GRANT moved that the Hon'ble Mr. Thompson and the Hon'ble Major Baring be added to the Select Committee on the Bill to consolidate and amend the law relating to Land-revenue and the jurisdiction of Revenue-officers in the Central Provinces.

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 20th April, 1881.

R. J. CROSTHWAITE,

Officiating Secretary to the Government of India,
Legislative Department.

SIMLA;
The 13th April, 1881.

Govt. Central Branch Press, Simla.—No. 47 L D.—21-4-81.—250.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House, Simla, on Wednesday, the 20th April, 1881.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.G., G.M.S.I., G.M.I.E., *presiding*.
His Excellency the Commander-in-Chief, G.C.B.
The Hon'ble Whitley Stokes, C.S.I., C.I.E.
The Hon'ble Rivers Thompson, C.S.I., C.I.E.
The Hon'ble J. Gibbs, C.S.I., C.I.E.
Major the Hon'ble E. Baring, R.A., C.S.I.
Colonel the Hon'ble G. T. Chesney, R.E.
The Hon'ble C. Grant.

INDIAN PAPER CURRENCY ACT AMENDMENT BILL.

The Hon'ble MR. STOKES introduced the Bill to amend the Indian Paper Currency Act, 1871, and moved that it be referred to a Select Committee consisting of the Hon'ble Mr. Thompson, the Hon'ble Major Baring and the Mover. When moving for leave to introduce this Bill, he had sufficiently described its object and nature. It was of the simplest character; but it was, no doubt, a piece of patchwork; and he would ask the Select Committee, to which he hoped the Council would refer it, to recommend that the Act be repealed and re-enacted with the amendments proposed by the Bill.

The Motion was put and agreed to.

The Hon'ble MR. STOKES also moved that the Bill be published in the local official Gazettes in English and in such other languages as the Local Governments might think fit.

The Motion was put and agreed to.

SINDH INCUMBERED ESTATES ACT AMENDMENT BILL.

The Hon'ble MR. GIBBS introduced the Bill to amend the Sindh Incumbered Estates Act, 1876, and moved that it be referred to a Select Committee consisting of the Hon'ble Messrs. Stokes, Thompson and Grant and the Mover.

The Motion was put and agreed to.

The Hon'ble Mr. Gibbs also moved that the Bill be published in the *Bombay Government Gazette* in English and in such other languages as the Local Government might think fit.

The Motion was put and agreed to.

BROACH AND KAIRA INCUMBERED ESTATES ACT AMENDMENT BILL.

The Hon'ble Mr. Gibbs also introduced the Bill to amend the Broach and Kaira Incumbered Estates Act, 1877, and moved that it be referred to a Select Committee consisting of the Hon'ble Messrs. Stokes, Thompson and Grant and the Mover.

The Motion was put and agreed to.

The Hon'ble Mr. Gibbs also moved that the Bill be published in the *Bombay Government Gazette* in English and in such other languages as the Local Government might think fit.

The Motion was put and agreed to.

EXCISE BILL.

The Hon'ble Mr. Stokes introduced the Bill to consolidate and amend the law relating to the Excise-revenue in Northern India, British Burma and Coorg, and moved that it be referred to a Select Committee consisting of the Hon'ble Mr. Thompson, the Hon'ble Major Baring and the Mover. He said that there were only two points about the Bill which required further notice. One was the great abbreviation of the present law which would be effected when the Bill was passed. The present law contained eighty-seven sections; the Bill only fifty-four. This was brought about partly by an improved arrangement of the matter of the law, and partly by the omission of five sections which related solely to Opium, and which had been repealed by the Opium Act; of four sections which were omitted as the subjects to which they related had been sufficiently provided for in the Sea Customs Act, 1878; of other sections provided for by the Penal Code and the Code of Criminal Procedure. Chapter VII of the present Act was omitted as it would be rendered unnecessary by the saving of the Cantonment Act, 1880, effected by the Bill. Other provisions had been omitted as their subjects might be dealt with by executive order; and it was a principle of our legislation never to provide by a law for what might legally be done by the Executive.

The other point which he ought to state more specifically to the Council related to the enhancement of certain penalties prescribed for offences against the Excise-law. He had stated generally when he obtained leave to introduce the Bill, that most of those penalties had been enhanced, and he would now state shortly the extent, in each case, of that enhancement. First, as regards unlicensed manufacturing of spirit and fermented liquor, the punishments under the present law for violating the rules relating to that matter were only fines of one thousand rupees and five hundred rupees; under the Bill there would be a fine of one thousand rupees, or imprisonment for six months, or both fine and imprisonment. Secondly, as regards smuggling, the penalties under the present law were fines of one thousand rupees and five hundred rupees; under the Bill there would be a fine of one thousand rupees, or imprisonment for six months, or both fine and imprisonment. The penalties under the present law for the illicit sale of spirits or intoxicating drugs were fines of five hundred rupees and two hundred rupees; under the Bill there would be for that offence a fine of one thousand rupees, or six months' imprisonment, or both. For the illegal possession of spirits and drugs the present law provided a fine of two hundred rupees for each offence; the Bill authorized the infliction of a fine of one thousand rupees, or six months' imprisonment, or both.

As to breaches of the rules for the management of distilleries—under the present law the only penalties were fines of two hundred rupees and fifty rupees; under the Bill the fines were reduced to one hundred rupees. The illegal manufacture of intoxicating drugs was not provided for by the present law; the Bill would impose a fine of one thousand rupees, or six months' imprisonment, or both, for that offence.

Except in the case of breach of rules and unimportant breach of license, the Bill contemplated imprisonment in the criminal jail, where it might be rigorous or simple at the discretion of the convicting magistrate. Where a landowner connived at illicit manufacture, the imprisonment in default of payment of the fine would, under the Bill, be in the criminal jail: under the Act it was in the civil jail.

Those were the changes which had been introduced in the chapter on penalties, and it was for the Financial Department, if, after what he had said, it was thought necessary to do so, to justify the alterations. He would only remark that the statement which he had made to the Council at the last meeting, as to the impossibility of securing the excise-revenue without enhancing the penalties under the present law, seemed supported by the action of this legislature with regard to the Opium Act and by that of the Government of India with regard to the Bengal Excise Act, 1878. The Opium Act was held by this Council to be rendered necessary by the inadequate penalties then

provided in the Excise-law (Act No. X of 1871) for offences which endangered the safety of the opium-revenue, a very precious imperial asset. The revenue arising from spirit, fermented liquor and intoxicating drugs was made a provincial asset from the beginning of the year 1877-78. The Local Governments naturally soon claimed the same protection for their excise-revenue as the Supreme Government had provided in the case of opium; and, in particular, the Bengal Government, with the sanction of the Government of India, passed, in 1878, a local Act, the main feature of which was the introduction of rigorous imprisonment for excise-offences in lieu of simple detention in the civil jail.

His Excellency THE PRESIDENT observed that the papers connected with the Bill had only come into his hands just before the meeting of the Council. He had not had time therefore to consider them, especially with reference to the question of the enhancement of the penalties; and he desired to reserve his opinion on the subject until he had an opportunity of seeing what arguments had been brought forward by the Local Governments in favour of the proposed changes.

The Motion was put and agreed to.

The Hon'ble MR. STOKES then moved that the Bill be published in the local official Gazettes of the territories to which it extended, in English and in such other languages as the Local Governments might think fit.

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 4th May, 1881.

R. J. CROSTHWAITE,

SIMLA;
The 20th April, 1881.

Offg. Secretary to the Government of India,
Legislative Department.

Govt. Central Branch Press, Simla.—No. 68 L. D.,—30-4-81.—250.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House, Simla, on Wednesday, the 11th May, 1881.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.G., G.M.S.I., G.M.I.E., *presiding*.
His Honour the Lieutenant-Governor of the Panjáb, K.C.S.I.
His Excellency the Commander-in-Chief, G.C.B.
The Hon'ble Whitley Stokes, C.S.I., C.I.E.
The Hon'ble Rivers Thompson, C.S.I., C.I.E.
The Hon'ble J. Gibbs, C.S.I., C.I.E.
Major the Hon'ble E. Baring, R.A., C.S.I.
Major-General the Hon'ble T. F. Wilson, C.B.
The Hon'ble C. Grant.

CENTRAL PROVINCES LAND-REVENUE BILL.

The Hon'ble MR. GRANT presented the Report of the Select Committee on the Bill to consolidate and amend the law relating to Land-revenue and the jurisdiction of Revenue-officers in the Central Provinces.

His Excellency THE PRESIDENT remarked that a paper which he now held in his hand had been sent to him some time ago; it was addressed to the Commissioner of the Nágpur Division by Gopal Narayan Ghatate and others, and embodied their views on the Bill. HIS EXCELLENCY wished to know if the various points to which they had drawn attention had been considered by the Committee.

The Hon'ble MR. GRANT replied that one important point at least had been under consideration,—that relating to the jurisdiction in the trial of cases relating to revenue-free grants—and the Committee had made certain recommendations on the subject.

Major the Hon'ble E. BARING :—"The Committee has also been able to meet the views of the memorialists to a certain limited extent in respect to the manner of appointing mukaddams."

His Excellency THE PRESIDENT presumed that he would find in the Committee's Report what had been done.

The Hon'ble MR. GRANT replied in the affirmative.

CENTRAL PROVINCES CESSES BILL.

The Hon'ble MR. GRANT moved for leave to introduce a Bill to provide for the assessment of Provincial Cesses in the Central Provinces. He said that it was the practice in all settlements made in the Upper India Provinces to impose upon the payers of land-revenue certain local rates for the maintenance of schools, roads and district postal lines. As those rates were levied together with the land-revenue and calculated as a percentage upon the land-revenue, the provisions relating to them had been included as a matter of convenience in the Central Provinces Land-revenue Bill. It had, however, been represented to the Committee that it would be undesirable to include in the same Bill provisions relating to the land-revenue which was fixed for the period of settlement, and cesses which were variable, at any rate within certain limits, for that period; and that such a combination might give colour to the impression that it was a breach of faith to vary those rates during the settlement. The Committee admitted the force of those representations and determined to keep the two subjects entirely distinct; and, accordingly, the provisions relating to Provincial cesses had been taken out of the Land-revenue Bill and would be incorporated in the separate short Bill which he now moved for leave to introduce.

The Motion was put and agreed to.

SUNDRY BILLS.

The Hon'ble MR. STOKES moved that the Hon'ble Mr. Evans be added to the Select Committees on the following Bills:—

To define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques.

To define and amend the law relating to the Transfer of Property.

To define and amend the law relating to alluvion, islands and abandoned river-beds.

To consolidate and amend the law relating to the Courts of Small Causes established in the Presidency-towns.

To consolidate and amend the law relating to Criminal Procedure.

To amend the Indian Penal Code.

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 25th May, 1881.

R. J. CROSTHWAITE,

SIMLA; *The 11th May, 1881.* } *Officiating Secretary to the Government of India, Legislative Department.*

NOTE.—The meeting which was originally fixed for Wednesday, the 4th May, 1881, was postponed to Wednesday, the 11th May, 1881.

Govt. Central Branch Press, Simla.—No. 135 L. D.—21-5-81.—270.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House, Simla, on Wednesday, the 25th May, 1881.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.G., G.M.S.I., G.M.I.E., *presiding*.
His Honour the Lieutenant-Governor of the Panjáb, K.C.S.I.
His Excellency the Commander-in-Chief, Bart., G.C.B., C.I.E.
The Hon'ble Whitley Stokes, C.S.I., C.I.E.
The Hon'ble Rivers Thompson, C.S.I., C.I.E.
The Hon'ble J. Gibbs, C.S.I., C.I.E.
Major the Hon'ble E. Baring, R.A., C.S.I., C.I.E.
Major-General the Hon'ble T. F. Wilson, C.B., C.I.E.
The Hon'ble C. Grant, C.S.I.

BÁNKI LAWS BILL.

The Hon'ble MR. STOKES moved for leave to introduce a Bill to amend the law in force in the Mahál of Bánki. He said that it had been determined by Government to bring the Government estate of Bánki, which at present formed portion of a scheduled district under the Scheduled Districts Act, 1874, under the regular system of administration, and, for this purpose, to annex it, from the commencement of the next financial year, to the Khurda subdivision of the Regulation district of Púrí. Owing, however, to Bánki having hitherto formed portion of a scheduled district, there were certain differences between the law prevailing in it and the law in force in the Púrí district, which differences it was desirable to remove. The present Bill, which had been drawn on the lines of the Raipur and Khattra Laws Act, 1879, had accordingly been prepared. It assimilated the law in Bánki to that in the district of Púrí from the date on which Bánki was annexed to that district, and declared that from that date Bánki should cease to be a portion of a scheduled district.

The Motion was put and agreed to.

PORTUGUESE CONVENTION BILL.

Major the Hon'ble E. BARING moved for leave to introduce a Bill to give effect to the Convention between the Governors General of British India and

Portuguese India regarding their respective systems of moneys, weights and measures. He said that the Council were, no doubt, aware that on the 26th of December, 1878, a Treaty of Commerce and Extradition was executed between Great Britain and Portugal, and ratified on the 6th of August, 1879, in which it was provided that the High Contracting Parties should use their best endeavours to establish between their respective systems of moneys, weights and measures the harmony desirable for the development of commercial relations between their respective dominions. It was also provided that any detailed measures which were necessary should be provided for in a separate Convention which should be executed within two years from the date of the Treaty. The Treaty itself came into force on the 15th January, 1880, and the Convention was signed on the 12th of April, 1880. It was now necessary to pass a short Act to give legal effect to the provisions of the Convention. The Bill which he now asked for leave to introduce was a very short one. It provided, in the first section, that it was to extend to the whole of British India, and that it should come into force at once; in the second section, that the provisions of the Convention, so far as they were binding upon the Government of British India, should be deemed to have the force of law; and, in the third section, that the provisions of Act No. XXIII of 1870 (The Indian Coinage Act) should be applied to all coin made and bullion brought for coinage to the Mint under the Convention.

The Motion was put and agreed to.

Major the Hon'ble E. BARING then introduced the Bill.

Major the Hon'ble E. BARING also applied to His Excellency the President to suspend the Rules for the conduct of business. He said that there had been a very unfortunate delay in dealing with this question which obliged him now to make this request, and with a view, on the suspension of the Rules, to move that the Bill be taken into consideration. The course which he now proposed to adopt was no doubt unusual, and in some respects objectionable; but such a course was generally held to be justified when the matter before the Council was one of urgency, and also when it dealt with a measure which, practically, might be said to be out of the limits of ordinary discussion. He thought, though he very much regretted to have to ask that the Rules should be suspended, that the proposed measure came within the category to which he alluded. It was urgent because we were under the obligation to make those Portuguese coins legal tender in British India; and we had received a communication from the Governor General of Goa complaining that the Railway employés and others in the Bombay Presidency refused to receive the Portuguese currency; it was therefore very desirable to put a stop to such an inconvenient state of things. As regards the

formal character of the measure, it was only necessary for him to say that it merely gave effect to the Convention which was signed more than a year ago. He thought that there could hardly be two opinions as to the advisability of passing the Bill without further delay.

His Excellency THE PRESIDENT quite agreed with his hon'ble friend Major Baring that the suspension of the Rules was an unusual, and to some extent an objectionable, course, and that it was a matter in regard to which we should be very careful. Those Rules gave security to the public that the business in the Legislative Council would be properly considered, and that the public itself would have an opportunity of knowing what the Council was about, and of making its views known to them. For the reasons alleged, however, it appeared to HIS EXCELLENCY that the suspension of the Rules in the present case was perfectly justifiable; indeed, that we were bound in regard to what we owed to the Portuguese Government in India to pass this Bill as speedily as possible. HIS EXCELLENCY therefore declared the Rules suspended.

Major the Hon'ble E. BARING moved that the Bill be taken into consideration.

The Motion was put and agreed to.

Major the Hon'ble E. BARING also moved that the Bill be passed.

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 1st June, 1881.

R. J. CROSTHWAITE,

SIMLA; *The 25th May, 1881.* } *Officiating Secretary to the Government of India, Legislative Department.*

Govt. Central Branch Press, Simla.—No. 170 L. D.—3-6-81.—270.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House, Simla, on Wednesday, the 1st June, 1881.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.G., G.M.S.I., G.M.I.E., *presiding*.
His Honour the Lieutenant-Governor of the Panjáb, K.C.S.I.
His Excellency the Commander-in-Chief, G.C.B., C.I.E.
The Hon'ble Whitley Stokes, C.S.I., C.I.E.
The Hon'ble Rivers Thompson, C.S.I., C.I.E.
The Hon'ble J. Gibbs, C.S.I., C.I.E.
Major the Hon'ble E. Baring, R.A., C.S.I., C.I.E.
Major-General the Hon'ble T. F. Wilson, C.B., C.I.E.
The Hon'ble C. Grant, C.S.I.

CENTRAL PROVINCES LAND-REVENUE BILL.

The Hon'ble MR. GRANT moved that the Report of the Select Committee on the Bill to consolidate and amend the law relating to Land-revenue and the powers of Revenue-officers in the Central Provinces be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. GRANT asked leave to postpone the motion that the Bill, as amended, be passed.

Leave was granted.

BANKI LAWS BILL.

The Hon'ble MR. STOKES introduced the Bill to amend the law in force in the Mahál of Bánki, and moved that it be referred to a Select Committee consisting of the Hon'ble Mr. Thompson and the Mover.

The Motion was put and agreed to.

The Hon'ble MR. STOKES also moved that the Bill be published in the *Calcutta Gazette* in English and in such other languages as the Local Government might think fit.

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 8th June, 1881.

R. J. CROSTHWAITE,

SIMLA;
The 1st June, 1881.

Officiating Secretary to the Government of India,
Legislative Department.

Govt. Central Branch Press, Simla.—No. 180, L. D.—3-6-81.—270.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House, Simla, on Wednesday, the 8th June, 1881.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.G., G.M.S.I., G.M.I.E., *presiding*.
His Honour the Lieutenant-Governor of the Panjáb, K.C.S.I., C.I.E.
His Excellency the Commander-in-Chief, Bart., G.C.B., C.I.E.
The Hon'ble Whitley Stokes, C.S.I., C.I.E.
The Hon'ble Rivers Thompson, C.S.I., C.I.E.
The Hon'ble J. Gibbs, C.S.I., C.I.E.
Major the Hon'ble E. Baring, R.A., C.S.I., C.I.E.
Major-General the Hon'ble T. F. Wilson, C.B., C.I.E.
The Hon'ble C. Grant, C.S.I.

CENTRAL PROVINCES LAND-REVENUE BILL.

The Hon'ble MR. GRANT moved that the Bill to consolidate and amend the law relating to Land-revenue and the powers of Revenue-officers in the Central Provinces, as amended, be passed. He said:—"It is now rather more than a year since I asked leave to introduce the Bill at present before the Council. As I then told the Council, it had already had a pretty long history, and had gone through various experiences and vicissitudes. Since that time, the Bill in its amended form has again been subjected to the criticisms of the local authorities and others in the Central Provinces; and I am glad to say that, among the opinions received, have been those of several of the land-holding body. Their comments have been as favourable as could have been expected, considering that, although the Bill is for the most part a mere consolidation of existing law or practice, yet, it gives, and must by its very nature give, definite shape for the first time to certain restrictions on the land-holding classes. However, viewed as a whole, it has been received with approval. Thus, the Bhuskate, a landholder of considerable position and influence, welcomes it as likely to—

'remove almost all the difficulties regarding the settlement and collection of the revenue that come across both the ruled and the rulers.'

So, too, another well-known gentleman, Vinayak Ráo, an Honorary Magistrate and a large landholder, considers that the Bill will be—

'a measure of great benefit to the interests of both landholders and tenants.'

"On the other hand, objections have been made from various quarters to two or three of its provisions; but these objections, as I hope to show shortly, either rest on misconceptions, or will be met by the changes introduced in Select Committee. From the officials consulted also, a large number of criticisms have been obtained, many of which are useful, and some valuable; and, though they have not been such as to necessitate any radical changes in the measure, they have led to a good deal of alteration in matters of detail. With such of the modifications made in consequence as are either formal, or technical, or of minor importance, I need not trouble the Council; but some explanation will be necessary on those few points which have attracted a comparatively large share of attention.

"The only provisions of the Bill which have excited anything approaching to genuine apprehension are those relating to *mukaddams*, or village headmen. As the Bill originally stood, provision was made for the appointment of these functionaries, and their duties were described; but the conditions under which they might be appointed were not stated with sufficient clearness, and hence room was left for the supposition that it was intended to supersede landholders in some of their most legitimate functions by means of paid officials put over their heads in their own villages. Such an idea not unnaturally met with little favour, and I am glad to be able to say that it was quite without foundation. As the Chief Commissioner explains in his letter of 15th October, 1880, transmitting opinions on the Bill, the miscellaneous duties which the Bill imposes on the *mukaddam* had always, in the Central Provinces, been discharged by the head of the village; and, under the Native Government, any neglect of them would probably have resulted in forfeiture of the village. Even in the earlier days of our rule, before the award of proprietary right at the late settlements, no difficulty could arise in enforcing the performance of these duties, as the bulk of the land was held on mere farming leases, which the Government could always renew or not as it pleased; and at the head of each village was a responsible farmer, who was aware that the continuance of his lease depended on his good behaviour. The recent gift of proprietary right set grantees free to sub-divide among their families or to sell to richer men. Thus, many village-estates broke up, whilst others accumulated in the hands of absentee capitalists. In the latter case, the Government had no one to look to for the performance of the customary duties attaching to land; whilst, in the former, there were so many landlords that responsibility was divided and frittered away. Further, notwithstanding pledges made by them at the settlements,

landholders, in some instances, took advantage of the increased securities of their position to neglect duties which could no longer be exacted from them by the simple expedient of ejection. Consequently, there was a practical difficulty to be dealt with; and, in the words of the Chief Commissioner,

'no more simple or effective arrangement was possible than appointing a *mukaddam* in each village to discharge the miscellaneous duties properly devolving on the village head.'

He goes on to say—

"'On two points there is absolute unanimity among Revenue-officers, namely, that the duties detailed in section 142 (section 141 of the present draft) are duties requiring to be performed in villages, and that they are not efficiently discharged.'

"I may add that the village headship is an institution by no means peculiar to the Central Provinces, or even to India. Thus, to quote Sir George Campbell's Essay on Indian Land Tenures in the Cobden Club collection,—

"'In all cases in which there was not a democratic body electing their own headmen, there was a headman whose functions were partly those of a Government officer and partly those of the head of a quasi-municipality. This headman was called the *mukaddam* in the more northern and eastern provinces; *patel* in Western and Central India and in the Maratha Deccan; and *ganda* in some other parts of the south.'

"Analogous examples may be found in Russia, among the southern Slavs, in Lombardy, and even among the democratic Swiss, whose village assemblies are regulated by elected Presidents. Indeed, it must be obvious that whenever land is held or worked, as in this country, by bodies of villagers instead of by isolated occupiers, the dealings of the communities, external and internal, must be regulated by chosen representatives, or something approaching to anarchy may result. In a recent paper by the Chief Commissioner of Assam on the Nágá Hills district he partly attributes the difficulty of dealing with the Nágá tribes to their want of some such institution. Thus, he says,—

"'Much importance was attributed by Sir S. Bayley to the appointment of elected headmen, who might, he hoped, be the nucleus of some sort of village organization, and gradually grow to be possessors of power and authority over the young men of the village. Such a change from the democratic and independent habits which the people now practise, into one of subordination to a Council of Elders under a village headman must, necessarily, be slow; but, if it can be effected, it will be a great help to good government.'

"So, too, it has been noticed as regards the Panjáb that, though both the frontier Afghan and the Biluch communities are in the tribal phase of social progress, it is easier to deal with the latter than with the former, because the Biluch tribes have acknowledged chiefs, who are the natural channel of communication with their tribesmen; whilst the frontier Afghans are comparatively disunited, and often pay so little respect to their chiefs that they cannot well be influenced through them,

"Still, even in making a necessary reform, it is right to respect vested interests; and in the question under discussion, namely, the appointment of *mukaddams*, I am happy to be able to say that there is neither occasion nor desire to supersede the ordinary village-machinery where it still exists. Again, to quote the Chief Commissioner,—

"'The truth is that no such evils as are apprehended can possibly result, since the rules will preclude the appointment of outsiders, unless in exceptional cases where no resident lambardárs exist to discharge the duties, and where, in consequence, the duties are at present neglected.'

"In order, however, to make security doubly sure, the Select Committee has added a clause to section 137 of the Bill providing that—

"'In every village in which there are resident málguzárs, one of such málguzárs shall be the mukaddam.'

"In some other matters also, we have been able to consult the wishes of landholders who had reasonable objections to make to particular provisions of the Bill. Thus, in order to meet the cases in which the proprietor of a village might take advantage of the law to accumulate in his own hands more land than he could properly manage, as *sír* or home-farm, with the view of preventing occupancy rights from accruing thereon, it was originally provided that land which was allowed by its proprietor to lie unoccupied for three years should thereby lose its privileged character as *sír*. But it was represented by the landholders of Chhindwára that the poor soil, of which that district largely consists, must be left to lie fallow, in the ordinary course of husbandry, for at least three years; and, accordingly, this period has been extended to six years in the definition of *sír*-land.

"So, too, some landholders of the Nágpur district objected to jurisdiction over all claims to hold land revenue-free being assigned to Revenue-officers instead of to Civil Courts. They admitted that, in most cases,

'claims to hold land free of revenue rested mainly on the kindness and generosity of the Government,'

but urged that

'cases might arise where such claims would be based on contracts implied or express, or other equally binding sources of right.'

"To meet this plea, the Select Committee has provided, in section 152, clause (*b*), that cases of the kind contemplated, that is to say, cases of rights arising under any contract between the Government of India and grantees of land, shall be excepted from the matters in which the jurisdiction of the Civil Courts is excluded.

"These are the principal points in regard to which exception has been expressly taken to the provisions of the Bill. But in other respects also, the

Committee has endeavoured to guard against possible sources of objection, as, for instance, by sharply distinguishing penalties leviable under the Act for breach of rule from criminal fines, and by providing a different procedure for their realization; by somewhat limiting the wide powers of revision vested in the Chief Commissioner; by devising additional securities to protect the right of excluded proprietors; by conceding to landholders against whom proceedings have been taken under section 123 to enforce observance of settlement engagements, other than the payment of revenue, a right of suit to set aside such proceedings; and by various other changes with which I need not trouble the Council at length.

"Indeed, I hope hon'ble Members will be sufficiently satisfied from the details which have already been given, and from the opinions which will be found in the papers attached to the Bill, that they may safely give effect to the recommendations of the Select Committee. For myself, I believe that the Bill in its amended form will, in all essentials, satisfy the Local Government, and will meet with little or no opposition from the classes which it most concerns."

His Excellency THE PRESIDENT wished to ask the Hon'ble Mr. Grant one question with reference to a clause to which he had alluded. In the last paragraph of the proviso under section 137 of the Bill, which was intended to secure the interests of the málguzárs, he observed that the words were that "in every village in which there are resident málguzárs, one of such málguzárs shall be the mukaddam." HIS EXCELLENCY wished to know if there were not cases in which there was only one málguzár in a village.

The Hon'ble MR. GRANT replied that there were.

His Excellency THE PRESIDENT inquired from the Hon'ble Mr. Stokes whether any doubt in such cases as to appointment was likely consequently to arise.

The Hon'ble MR. STOKES explained that, under the General Clauses Act (No. I of 1868), section 2, clause 2, the plural included the singular. He thought that where there was only one resident málguzár he would be the mukaddam, and that the case was sufficiently provided for.

The Hon'ble MR. GRANT remarked that the only object of the appointment of a mukaddam was to secure from landholders the adequate performance of their admitted duties; and that there was no desire to supersede them. Where there was only one málguzár, he would, naturally, be the mukaddam, and the provisions of the Bill would enable the authorities to keep him up to his engagements.

His Honour THE LIEUTENANT-GOVERNOR said that there was one point on which he should like to ask a question. In section 141, which provided for the duties of mukaddams amongst other things, it was to be the duty of the mukaddam, under sub-section (*e*), "subject to any rules issued by the Chief Commissioner, to keep his village in good sanitary condition"; further on, in section 143, it was provided that "Every mukaddam may recover from the lambardárs or sub-lambardárs of the village to which he is appointed his own remuneration, together with any expenses necessarily incurred in the performance of his duties"; and again, in section 149, those sums might "be recovered in the same manner as an arrear of revenue payable directly to the Government." HIS HONOUR wished to know if any limit was placed on the sums which a mukaddam might expend on village sanitation, and which would be recoverable from the village as arrears of land-revenue.

The Hon'ble MR. GRANT replied that there was no such limit provided for in the Bill; it was a matter which would be more conveniently provided for by rules; and it was to be expected that the local authorities would not sanction anything like extravagant expenditure. It was scarcely possible to devise a limit in the Bill for such a matter; but there was no reason, judging by past experience, to suppose that the charges for these purposes, if incurred at all, would be otherwise than light.

His Honour THE LIEUTENANT-GOVERNOR said that every Indian village was in need of sanitary improvement; opinions as to the degree to which such improvement should be carried varied with the interest which District Officers took in the subject. Proposals for improvement did not come from the people themselves. In order to produce real sanitary improvement it was necessary to carry the people with us. The Bill took power to impose taxation upon villages for sanitary purposes; and it seemed to him that, unless some safeguard was provided, a village might be taxed very much beyond what the intelligence of the people might consider a proper amount to spend on sanitation.

His Excellency THE PRESIDENT remarked that, as he understood the Bill, the matter would be within the competence of the Chief Commissioner, who might pass whatever rules he considered necessary.

His Honour THE LIEUTENANT-GOVERNOR said that he was not prepared to make any proposal on the subject; but the provision seemed to him quite novel; and it conferred a power of taxation which, in his opinion, ought not to be given without placing some restriction upon the amount to be raised, so that it might not exceed the means of the tax-payers.

His Excellency THE PRESIDENT observed that it was perfectly true that a power of taxation was given; but the power was given at the discretion of the Chief Commissioner. The question was how it was possible to put alimit upon it.

His Honour THE LIEUTENANT-GOVERNOR said that collections were made for village-expenses at a rate fixed by custom and recorded in the settlement-papers. The rate was generally a percentage on the land-revenue: the village headmen were not allowed to incur village-expenses beyond this amount. It seemed to him that some limit of this kind might be imposed in the present case.

The Hon'ble MR. STOKES said that it might, perhaps, reconcile His Honour to the provision to which he took exception if he (MR. STOKES) pointed out to him that, under section 162, paragraph 2, all powers to make rules conferred by the proposed Act on the Chief Commissioner would be exercised subject to the control of the Governor General in Council.

Major the Hon'ble E. BARING said that he might mention that the last phrase in the section just quoted by his hon'ble friend Mr. Stokes had been introduced especially with a view to giving some additional controlling power over the Chief Commissioner. It was meant with reference to all the sections of the Bill, in order to prevent any excessive exercise of the powers vested in the Chief Commissioner.

His Honour THE LIEUTENANT-GOVERNOR expressed himself as satisfied with those explanations, and thought that the power of control taken by the Government would be sufficient.

Major the Hon'ble E. BARING said that he should like to explain, with regard to His Excellency the President's remarks respecting the last paragraph of section 137, providing that one of the málguzárs of the village should be the mukaddam, that it was at his initiative that the clause in question was introduced. His idea at the time he proposed it was that, if there was only one málguzár in a village, he should be the mukaddam; and, as his hon'ble friend Mr. Stokes had now explained that the plural included the singular, he thought that the clause might be allowed to pass.

His Excellency THE PRESIDENT remarked that, after the explanations which had been given, he was quite satisfied with the clause as it now stood.

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 15th June, 1881.

R. J. CROSTHWAITE,

SIMLA; *The 8th June, 1881.* } *Officiating Secretary to the Government of India, Legislative Department.*

Govt. Central Branch Press, Simla.—No. 189 L. D.—21-6-81.—270.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House, Simla, on Wednesday, the 15th June, 1881.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.G., G.M.S.I., G.M.I.E., *presiding*.
His Excellency the Commander-in-Chief, Bart., G.C.B., C.I.E.
The Hon'ble Whitley Stokes, C.S.I., C.I.E.
The Hon'ble Rivers Thompson, C.S.I., C.I.E.
The Hon'ble J. Gibbs, C.S.I., C.I.E.
Major the Hon'ble E. Baring, R.A., C.S.I., C.I.E.
Major-General the Hon'ble T. F. Wilson, C.B., C.I.E.
The Hon'ble C. Grant, C.S.I.

INDIAN TRUSTS BILL AND INDIAN EASEMENTS BILL.

The Hon'ble MR. STOKES introduced the Bill to define and amend the law relating to Private Trusts and Trustees, and moved that it be referred to a Select Committee consisting of the Hon'ble Mr. Gibbs and the Mover. He also introduced the Bill to define and amend the law relating to Easements and Licenses, and moved that it be referred to a Select Committee consisting of the Hon'ble Mr. Gibbs and the Mover. He said:—"Your Excellency,—On the 20th January, 1876, the then Secretary of State for India sent us a despatch in which he declared that he could not regard the question of giving a Civil Code to India as in any sense an open one; that the completion of a Code of law was an accepted policy which could not be abandoned without great detriment to the people and serious discredit to the Indian Government; that many of the Indian appellate judges were in the habit of borrowing from the recognized English authorities English rules ill suited to Oriental habits and institutions (for instance, three of the four High Courts have held, in accordance with English law, that an invasion of privacy is not an actionable wrong); and that the only way of checking this process was by substituting for these rules a system of codified law adjusted to the best Native customs and the ascertained

interests of the country. He then, after referring to the Indian Succession Act and the Indian Contract Act, requested the opinion of the Government of India as to the order in which the remaining branches of the law should be taken up, and whether each branch should, as in the case of the Contract Act, extend to the whole country, or should, like the law of Succession, apply only in the first instance to certain special classes or provinces.

"In reply, the Government of India, in its despatch of the 10th May, 1877, enumerated the branches of substantive law which remained uncodified, recommended (amongst others) that the subjects of Trusts and Easements, or, as they are sometimes called, Servitudes, should be taken up; and expressed an opinion that the proposed laws dealing respectively with these subjects might safely and usefully be applied in the first instance to every one in British India.

"To this despatch the Secretary of State replied on the 9th August, 1877, sanctioning the course suggested by the Government of India.

"I accordingly prepared Bills dealing respectively with private trusts and easements. They were sent home to the Secretary of State in 1878, circulated to Local Governments in the same year, and revised by me in 1879 with reference to the criticisms thus elicited. Copies of the revised drafts were in the same year sent to the Secretary of State, circulated to the Local Governments, and, finally, submitted to the Indian Law Commission, composed of Sir Charles Turner (the present Chief Justice of Madras), Mr. Justice West and myself. The Law Commission carefully revised the Bills, and recommended that they should be passed into law—the Trusts Bill extending, in the first instance, to the whole of British India, the Easements Bill to the whole of British India, except the scheduled districts mentioned in Act XIV of 1874. Mr. West, however, whose drafting of the first part of the Commission's Report has been so much admired for its unpedantic simplicity and clearness, thought that the introduction of the latter Bill might, 'without public detriment, be for a short time postponed,' and desired 'not to be finally committed to all the details of the Bill, should further information suggest modifications in them.'

"The Bills as revised by the Law Commission were then, in pursuance of the permission of the Secretary of State contained in his despatch of the 7th October, 1880, published in the *Gazette of India* for the 13th November, 1880, and were also circulated to the Local Governments.

"The replies of the Local Governments and the opinions of the selected officers concerning the revised Bills have now been received, and I will give the Council abstracts of the contents of those replies and opinions.

"*I.—As to the Trusts Bill.*

"Before giving the précis relating to this Bill, I would ask leave to read to the Council the first three paragraphs of the Statement of Objects and Reasons:—

"'Trusts, in the strict sense in which that term is used by English lawyers, that is to say, confidences to the existence of which a 'legal' and an 'equitable' estate are necessary, are unknown to Hindú and Muhammadan law. But trusts in the wider sense of the word, that is to say, obligations annexed to the ownership of property which arise out of a confidence reposed in and accepted by the owner for the benefit of another, are constantly created by the natives of India and are frequently enforced by our Courts. "There is, probably," says Mr. Justice Phear (4 Ben. O. C. J. 131), "no country in the world where fiduciary relations exhibit themselves so extensively and in such varied forms as in India, and possession of dominion over property, coupled with the obligation to use it, either wholly or partially, for the benefit of others than the possessor, is, I imagine, familiar to every Hindú." So, too, in the case of Muhammadans, where a woman is entitled to a share of her deceased father's estate in the hands of her brother (W. R. 1864, p. 377), or to exigible dower in the hands of her husband (6 W. R. 111). Trusts created by an old man for his own maintenance and ulterior purposes, for a widow, for a daughter, step-daughter or daughter-in-law and her children, are of pretty frequent occurrence amongst the Natives, whether Hindú or Muhammadan, and it is desirable to keep them free from the complication of double estates in which, without the intervention of the legislature, they are certain to become entangled. But apart from the Native property-holder, there is the large body of domiciled Europeans and Eurasians who have for nearly a century enjoyed and taken advantage of a trust-law recognised by our Courts: the number and wealth of this class have increased, and in suits between members of this community every Court in the country may be called upon to administer a trust-law. Nevertheless, with the exception of certain provisions in the Penal Code, the Specific Relief Act, the Code of Civil Procedure and the Limitation Act, the Indian Statute-book is silent on the subject so far as regards the bulk of the population; for the Statute of Frauds, sections 7 to 11, is in force only in the Presidency-towns, and the rules contained in Acts XXVII and XXVIII of 1866 extend only to cases to which English law is applicable, and are, in themselves, incomplete.

"'The object of the present Bill is to codify the law relating to trusts in the wider sense above described; but it saves the rules of Muhammadan law as to *waqf*, and the mutual relations of the members of an undivided family. And it leaves untouched religious and charitable endowments established by Hindús and Buddhists, as being matters in which the legislature cannot at present usefully interfere further or otherwise than has been done by Act XX of 1863.

"'With the few exceptions mentioned in this Statement, the rules contained in the Bill are substantially those now administered by English Courts of Equity and (under the name of "justice, equity and good conscience") by the Courts of British India.'

"The précis of the papers lately received from the ten Local Governments is as follows:—

"(*a*) The Bengal Government gives no opinion on the Bill, but considers that 'legislation in this direction is premature and altogether in advance of

the requirements of the time.' Why it is premature, or how it is in advance of the requirements of the time, does not unfortunately appear. The learned Advocate General (Mr. Paul) and Legal Remembrancer (Mr. Allen) naturally think the Bill not required. On the other hand, two of the three Native Judges whom the Lieutenant-Governor has recently consulted (Brajendra Kumar Seal and Amrita Lál Chattarjí) seem in favour of the proposed legislation. Grish Chandra Ghose and Mohendra Náth Bose also gave, in 1879, opinions in favour of the Bill as it then stood. I mention this merely as exemplifying what I have often noticed, that the Native judiciary are in advance of some of their European official superiors in intelligent appreciation of the advantages of codified law.

"(*b*) The Madras Government expresses no opinion on the Bill, but forwards reports from the able and learned Advocate General (Mr. O'Sullivan) and certain District Judges,—all strongly in favour of the Bill. I would ask the particular attention of the Council to the following remarks of Mr. Wigram (Officiating District Judge, South Malabar) dated 20th December, 1880, as to the beneficial effects likely to result from enacting it. They embody in a short space almost all that I could say in favour of legislation on the subject :—

"'The Act will contain no law that we are not at present bound to administer without its assistance. The only difference will be that, instead of groping for principles and precedents to guide our decisions, the principles will be ready to our hands.

"'As an illustration of what I mean, I may mention that only a few weeks ago I was asked by a gentleman who was executor of a will whether he was at liberty, with the consent of the beneficiaries, to invest money on mortgage instead of purchasing an annuity as directed by the will, and whether there was any limit as to the amount he might advance on the security of a mortgage,

"'The answers to both these questions are to be found in sections 11 and 20 of the Bill; but I was only able to inform my querist what was the proposed law.

"'Again, by far the most important part of the Bill is Chapter IX [of certain obligations in the nature of Trusts]; and for myself I may say that it would be of incalculable advantage to all the mufassal Courts to have the clear principles there laid down for our guidance.

"'Not a month passes in which some case does not come before me as an Appellate Court in which sections 81 and 86 are applicable; and I can recall to my recollection cases in which sections 83, 85, 88, 89, 91 and 93 contain the rule of law which should have governed the decision and which had to be evolved by much labour from the Contract Act, English text-books and precedents, and the Judge's own inner consciousness.'

"(*c*) The Bombay Government thinks the measure premature, though the Legal Remembrancer and two District Judges,* whom it has consulted, consider that its provisions will prove beneficial. 'If, however,' says the Bombay Government, 'it be

*Mr Coghlan, Judge of Thána; Mr. Welderburn, Judge of Ahmadnagar.

considered advisable to pass anticipatory measures of this kind, this Government has no detailed objections to offer to the Bill as now amended, provided that the local extent of the Act be a matter left entirely to the discretion of the Local Government.' The Council will see that this is precisely the course which the Government of India proposes to follow, so far as regards the Presidency of Bombay.

" (*d*) The Government of the North-Western Provinces gives no opinion for or against the Bill, but sends opinions from three District Judges and the Judicial Commissioner of Oudh, each of which is to the effect that the Bill is unobjectionable. Messrs. Moens and King express doubts whether it is needed.

" (*e*) The Panjáb Government is now in favour of the Bill, though it would prefer that power to invest District Courts with authority to act under certain sections should be left with the Lieutenant-Governor. Mr. Justice Barkley (whose opinion is enclosed) thinks that the Bill 'will be a very useful addition to our Statute-book.'

" (*f*) The Central Provinces Government expresses no opinion on the Bill, but forwards two opinions from the Officiating Judicial Commissioner and his Registrar, which seem to be in its favour.

" (*g*) The Burma Government would apparently have the Act in Rangoon. Its express recommendation resembles that of the Bombay Government, and is that the Bill 'should not be made applicable to the whole of British India, but only to the districts, tracts or places to which the Local Government may extend it.' The Recorder of Rangoon (Mr. Wilkinson) and the Commissioners of the Arakan and Pegu Divisions are in favour of the Bill. The Commissioner of the Tenasserim Division is against it, except in the case of domiciled Europeans and Eurasians.

" (*h*) The Chief Commissioner of Coorg and the Judicial Commissioner are in favour of the Bill, the latter making only one suggestion for its amendment.

" (*i*) The Chief Commissioner of Ajmer and Merwára gives no opinion, but forwards that of Mr. Saunders, the Commissioner, which is to the effect that the Bill is well drawn, but that it makes trusts too irksome, and that it should not at present be extended to the whole of British India 'and more particularly so to Ajmer-Merwára.'

" (*j*) The Chief Commissioner of Assam (Sir Steuart Bayley) generally approves of the Bill, and considers it as it stands to be a complete statement of the law, so far as any exists, and generally in accordance with reason and equity.

"To sum up, it would seem that the Trusts Bill, in its present form, might, with the assent of the Local Governments, be applied at once to the whole of British India, except the Lower Provinces, the Presidency of Bombay, British Burma and, perhaps, Ajmer. The Local Governments might be empowered to extend it to the excepted provinces.

"*II.—As to the Easements Bill.*

"In the case of this Bill also, before giving the précis of the replies and opinions of the Local Governments and their selected officers, I will quote the commencement of the Statement of Objects and Reasons :—

"'This Bill is intended to form part of the Indian Civil Code, and attempts to state, clearly and compactly, the rules relating to Easements, that is to say, the rights [such as rights of way, rights to discharge rain-water, rights to support] which a man sometimes has over one piece of immoveable property by reason of his ownership of another. As to these rights our present statutory law is silent, except so far as regards the acquisition of easements by long and continued possession, the limitation of suits for disturbing them, and the granting of injunctions to prevent such disturbance; and three of our most experienced Judges—Sir Michael Westropp, Mr. Justice (now Sir Louis) Jackson and Mr. Justice Innes—have expressed their opinion that it is desirable to codify the law on the subject, which is now (to quote the Chief Justice of Bombay) "for the most part to be found only in treatises and reports practically inaccessible to a large proportion of the legal profession in the mufassal and to the subordinate Judges" There is much litigation in the case of urban easements, and a late Judge of the Panjáb Chief Court asserts that this is largely due to the fact that neither the people themselves, nor the majority of the Courts, understand the principles upon which such disputes should be determined. The Bill is mainly based on the law of England, which, being just, equitable and almost free from local peculiarities, has, in many cases, been held to regulate the subject in this country; but a few deviations (hereinafter specified) have been made from that law, and rules as to some matters which have not hitherto come under the cognizance of the English and Indian Courts have been adapted from the writings of modern jurists.'

"The précis of the papers relating to this Bill, which have been lately received from the Local Governments, is as follows :—

"(*a*) The Bengal Government is of opinion that there is at present no pressing necessity for any legislation on the subject. But Mr. Grant, the District Judge of Huglí, is satisfied that a law on the subject is called for, and that the proposed law, so far as he can judge, will admirably answer the purpose, and is not unfitted in any way that he can see for practical adoption in this country. 'Matters,' he says, 'involving rights of easement are constantly coming up in the Courts of this province, and can be decided only by reference to the English law; but it is obviously inconvenient that a system of law which is not of real authority in our Courts, and which is not thoroughly understood by the presiding officers, should be administered thus incompletely.' And Mr. Beveridge,

the Officiating District Judge of Patna, thinks 'the Bill may be applied to the whole of Bengal, and even to some of the Scheduled Districts, *e.g.*, to Jalpaiguri.' On the other hand, Mr. Paul (the Advocate General) and Mr. Browne of Patna are opposed to the Bill—the former considering it too elaborate, though if it were a whit less elaborate he would certainly, and rightly, have blamed it as incomplete: the latter maintaining that it should be based on totally different principles, one of which is the somewhat startling assertion 'that easements do not include rights arising from contract.'

"(*b*) The Madras Government expresses no opinion on the Bill, but sends up six opinions from local officers. Of these, five (though some, I am glad to say, contain acute criticism) are on the whole in favour of the Bill. The Advocate General, for instance, thinks 'it meets most cases that are likely to arise in practice, so far as it is possible for legislation to anticipate such cases; and there can be no doubt, in my view, that such an enactment will prove of great service to the public.' The Native Subordinate Judge, Madura (Mr. A. L. V. Rámana), says that the Bill appears 'to be calculated to meet a want long felt,' and that its provisions 'when enforced as law will be highly beneficial to the public.' The Collector of Madura does 'not think that any of the provisions of the Bill are likely to cause difficulty in this part of India except, perhaps, that in section 17 (*d*), where it is declared that a right to surface-water not flowing in a stream cannot be acquired by prescription.' The sixth, Mr. Plumer, District Judge, North Arcot, cannot say that the Bill is urgently needed, but adds that the Bill may be found to meet a want in parts of the Madras Presidency where extensive mining operations will in all probability be undertaken—'in such cases,' he says, 'it will, no doubt, be of advantage that the law on such subjects as the right of support of surface and the right to appropriate water flowing in a defined, and water flowing in an undefined, course should be clearly and succinctly set forth.'

"(*c*) The Bombay Government 'have no objection to offer to the details of the Bill in its present form; but they most strongly deprecate its indiscriminate extension to the mufassal, and would, therefore, make the law permissive.' So far as regards the Bombay Presidency, this is the course which the Government of India proposes to follow. On the other hand, the Legal Remembrancer believes that it 'might advantageously be extended to the whole of this Presidency.' The District Judges of Thána and Ahmadnagar approve of the Bill. The Collector of Satára also approves, but would not immediately apply it to any part of the Presidency beyond the town of Bombay. The Commissioner of the Northern Division would apparently extend it to large towns such as Bombay, Ahmadábád, Broach, Surát, Puná, where the city surveys have been completed. Mr. Justice West, after

having recommended as a member of the Indian Law Commission that the Bill should become law, subject to the qualification above quoted, now asserts that 'the best legislation for the present would be a single clause commanding that in every case of easements and accessory rights, the local custom should be given effect to.' He does not say what is to be done where there is no ascertainable local custom, or where the so-called custom is (as is often the case) unreasonable, or uncertain, or not compulsory, or not immemorial. He would, I presume, continue the present practice of referring to the treatises of Gale and Goddard, books of which no one but an English lawyer can thoroughly understand a single page. And he apparently forgets the numerous savings of local customs and their incidents which the Bill contains, and to which I will, by and bye, call the attention of the Council.

"(*d*) The Government of the North-Western Provinces and Oudh opposes the Bill on the ground that it is unnecessary in those Provinces, and that it 'will not be understood by the vast majority of those who may have to administer it, not to speak of the uneducated masses whom it will affect.' If, however, it is to become law, the Lieutenant-Governor would urge 'that its extension to any special province should be left to the option of the Local Government.' As regards the North-Western Provinces and Oudh, this will be done. Mr. Plowden, the Commissioner, Meerut Division, opposes the Bill on the ground that it "goes beyond the limits of existing custom'; and in support of this assertion he quotes a custom (that a right to discharge rainfall on adjacent land cannot be acquired by prescription) which has been illegal, and therefore no custom at all, since 1871—see Act IX of 1871, sec. 27, which is merely repeated in the present Bill. The senior Government Pleader, Jwála Prasáda, approves of the Bill, making, however, two suggestions for its amendment. The distinguished Native lawyer, Pandit Lakshmí Náráyan of Lucknow, though he was at first opposed to the Bill (and his opinion was therefore sent up and has recently been quoted by the Local Government), has written a second and very elaborate opinion (which has. by some accident not been sent up or noticed by the Local Government, but has been circulated to Hon'ble Members), in which he says: 'When writing my remarks on Bill No. I, I premised them by saying that it was undesirable to codify the law relating to the rights of easement, as most of the rights which it was intended to regulate were in a crude and undeveloped state. Since writing those remarks, I have reconsidered the subject, and think there is much force in the reasons assigned by Sir Michael Westropp, Mr. Justice Jackson and Mr. Justice Innes for holding the codification of the rules which govern the rights of easements to be necessary. There certainly are not many judges in the mufassal who understand anything about the rights of easements; and while

this is the state of the judicial mind on this subject it is not extraordinary that the knowledge of the legal practitioners who practise before them is not much better.'

"(*e*) The Panjáb Government approves of the Bill in its present form, but would give the Local Government the option of extending it to such areas as it thinks fit. Mr. Justice Barkley, on the other hand, so far as the Panjáb is concerned, does not think this option necessary. 'The Bill,' he says, 'as now framed is not likely to conflict with usage, while it provides principles for guidance as to matters on which custom would be silent; and if the law does not supply such principles, our Courts must determine what principles shall be applied, very likely borrowing them either from English or Roman law, or from the Act, though this may not have been extended.' Mr. Elsmie, the Commissioner, Lahore Division, now acting as a Judge of the Panjáb Chief Court, is of opinion that the proposed law will work well, and be of material use to the Courts and people, and 'can see no reason why, so far as the Panjáb is concerned, the extension of the law should be made permissive.' Mr. Ibbetson thinks that the proposed Act 'should be extended to large cities and nowhere else.'

"(*f*) The Chief Commissioner of the Central Provinces is satisfied with the Bill as it stands, and says that he has no reason for asking that the extension to those Provinces should be made permissive. 'In the absence of any evidence as to the existence of local customs with which the provisions of the Bill would conflict, he considers it unnecessary to distinguish between urban and village easements, and therefore thinks it desirable that the clear and complete exposition of the principles of the law on the subject of easements which the Bill contains should be made of general application.'

"I would here remark that, if the Bill had been drawn by His Honour the Lieutenant-Governor of the Panjáb himself, it could not have shown greater tenderness for local customs. For, first, it declares that nothing in the Bill shall be deemed to 'affect' (that is, to affect *in malam partem*, to derogate from, or contravene) customary rights over land which any person may possess irrespective of other land and rights acquired before the proposed Act comes into force: secondly, it recognises the easement of privacy, which, founded as it is on the oriental custom of secluding females, is of so much importance in India: thirdly, it recognises the acquisition of an easement (such as the right of a cultivator of village-land to graze his cattle on the common pasture) in virtue of a local custom: fourthly, it allows a way of necessity to be varied in accordance with local custom: fifthly, the chapter containing the rules as to the incidents of easements expressly declares that 'when any incident of any customary easement is inconsistent

with such rules, nothing in this chapter shall affect such incident': and, sixthly, the Bill saves all enactments not expressly repealed, such as, for example, the Panjáb Laws Act, IV of 1872, section 7, and the Oudh Laws Act, XVIII of 1876, section 4. It will thus avoid interference with local usage in those parts of India in which customary law prevails. It is, indeed, hardly too much to say that the Bill will not operate except in the absence of a local custom.

"(*g*) The Chief Commissioner of British Burma apprehends that an enactment of this kind is not at present required in that Province, and would not be understood either by the Burmese people or the Burmese judges. He would possibly extend its provisions to Rangoon. He hopes that, if passed, it may be made extendible to districts, towns and tracts by the Local Government. This will be done. The Commissioner of the Arakan Division is in favour of the Bill. The Commissioner of the Pegu Division has no objections. The Commissioner of the Tenasserim Division opposes it on the ground that it would promote litigation. I am almost ashamed to give the hackneyed answer to this hackneyed objection. The answer of course is, *à priori*, that the Bill, by explicitly declaring the law on points now held doubtful by the people, the bar and the judges, is calculated to check, rather than increase, litigation, and, *à posteriori*, that litigation has certainly been diminished by the codifying measures, such as the Contract law, the Specific Relief Act, the Evidence Act, the Hindú Wills Act and, above all, the Limitation Act, which have been passed in recent years. The Recorder of Rangoon (Mr. Wilkinson) and the late Officiating Judicial Commissioner (Mr. Crosthwaite) are both strongly in favour of the Bill, though the latter informs me that it will be difficult to translate it into Burmese. The same sort of thing was said about the translation of modern scientific books into the cognate language of China; but it is well known that this difficulty was overcome by the early Jesuit missionaries, and that the foreign translators employed at the Kiangnan Arsenal now freely use Chinese for scientific purposes. Messrs. Wilkinson and Crosthwaite would extend the Bill at once to Rangoon, Moulmein, Akyab and Bassein.

"(*h*) The Chief Commissioner of Coorg gives no opinion on the Bill, but forwards one from the Superintendent, 'that the Bill is clear, and there should be no difficulty in applying its provisions.'

"(*i*) The Chief Commissioner of Ajmer and Merwára (Lieutenant-Colonel Bradford) thinks that the provisions of the Bill are neither suitable for, nor required in, the Ajmer-Merwára District. He wisely gives no reason for this opinion.

"(*j*) The Chief Commissioner of Assam (Sir Steuart Bayley) is disposed to think that it would be expedient in the first place to extend the Bill only to towns, leaving the rural population entirely to their local usages. He is of opinion that 'the draft is a valuable and clear exposition of the law as it should be, and that it will be of much assistance to the Courts of this country in deciding cases which in the crowded and populous centres of Northern and Western India may frequently arise.'

"The result seems to be that the Easements Bill in its present form might, with the concurrence of all the Local Governments, be extended in the first instance to Madras, Coorg and the Central Provinces, and be made extendible to the other parts of British India at the option of the Local Government. In so framing the Bill we should follow the precedent of the recently passed Probate and Administration Act (V of 1881)—a precedent, it will be remembered, suggested by the present Secretary of State for India—and the advice of the highest living authority on the subject of codification, as given in a letter dated April 29th, 1881, from which I will read the more important passages:—

"'Many thanks for sending me the reports of committees. These papers, with many others connected with measures of codification which are reaching the India Office, raise the question of the form in which your codifying Bills can be passed, or whether they can be passed at all. I am tempted to call attention to a suggestion which I made to Lytton just before he left India; he did not, if I remember rightly, receive it altogether favourably, but there had not been time to give it much consideration.

"'My suggestion is that, after thoroughly sifting the opinions you have received from Local Governments and other authorities on the various Bills, you should select those provinces in which there appears to be either unanimous opinion or a great preponderance of opinion in favour of a particular measure, and that you should confine yourself in the first instance to applying each Bill to the part of India which distinctly asks for it through its authoritative voices. You would thus outflank the great difficulty which has arisen from the attempt to apply a certain class of measures to *all India*—an attempt which seems to me to have maximised all the objections to codification.

"'Some measures were naturally made of all but universal application, *e.g.*, the Codes of Procedure (including Evidence), the Penal Code, which is really of interest only to the criminal classes, and (more doubtfully) the Contract Act, which after all covers but a part of the subject. I have always thought that, for all or nearly all the remaining measures, the proper precedent to follow was that of the Succession Act. On account of the extreme prejudices

of the great masses of the population, it was applied to a very small class. Yet it has greatly extended its sphere through the natural influence of a rationally expressed and arranged branch of law on popular and legal opinion. You have now a different class of prejudices to contend against, those of the practising lawyers, of the administrative officials, and of Natives copying their ideas; but the way to minimise their objections is the same which was followed in the case of the Succession Act.

"'No doubt it seems absurd at first sight to confine what is really a chapter of a code to (let us say) the Central Provinces or British Burma. But, after all, it is so much gained. The law is on the Statute-book, and serves as a magazine of rules to courts and lawyers everywhere. It is sure to soften opposition elsewhere. And it will at once diminish the great evil of doing nothing, which consists in permitting the Courts and the lawyers to take rules and principles higgledy-piggledy from text-books of English law. West, with whom I conversed on the subject, quite agreed with me in this, and allowed that any complete body of law would, if easily accessible, soon work itself into the minds of judges and vakíls. If this be so, you would have gained your object and frightened nobody. . . . . .

"'The true alternative to codification is the course hinted at by a certain school of administrative officials, that of having no law at all, but of giving the fullest discretionary powers to functionaries of every class. I do not at all deny that a great deal may be said for it. If the history of India could be begun again, and if Parliament were not disposed to do what it did in the old statutes, and to force law upon us by the Courts it established, I am not at all sure that a wise Indian legislator would not go in for universal discretion. But the very Indian officials who denounce law do not seriously believe that it can be got rid of; and the only effect of their objections is to prevent its being improved in the only rational way. Great undigested lumps of English law are finding their way into the law administered by the Courts to the people. I doubt whether in India there are a dozen copies of some of the books from which this law is taken, and these are, of course, written in a language unintelligible to the bulk of the Natives and to the great mass of Englishmen.

"'The true remedy is of course the simplification and articulate expression of law by what are called Codes.'

"Both Bills having been published under the Rules for the conduct of business, it is unnecessary to move for leave to introduce them into this Council.

"But I now propose, with the consent of Your Excellency and the Council, to introduce them and refer them to Select Committees, stating at the same time, in the case of the Trusts Bill, that, so far as regards the Lower Provinces, the Bombay Presidency, Burma and Ajmer, it will be merely extendible at the option of the Local Government, and, in the case of the Easements Bill, that it will apply, in the first instance, only to Madras, Coorg and the Central Provinces, and that, as regards the rest of British India, it will be extendible to such areas as the Local Government thinks fit. The two Bills, as settled by the Select Committees, will then, in accordance with the Secretary of State's orders, be retranslated and recirculated, and will be submitted to him, with the reports of the Committees, before any further steps are taken."

The Motions were put and agreed to.

The Council adjourned to Wednesday, the 6th July, 1881.

R. J. CROSTHWAITE,

SIMLA; *The 15th June, 1881.*

Officiating Secretary to the Government of India,

Legislative Department.

Govt Central Branch Press, Simla.—No 200 L. D.—24-6-81.—270.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House, Simla, on Wednesday, the 6th July, 1881.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.G., G.M.S.I., G.M.I.E., *presiding*.
His Honour the Lieutenant-Governor of the Panjáb, K.C.S.I., C.I.E.
His Excellency the Commander-in-Chief, Bart., G.C.B., C.I.E.
The Hon'ble Whitley Stokes, C.S.I., C.I.E.
The Hon'ble Rivers Thompson, C.S.I., C.I.E.
The Hon'ble J. Gibbs, C.S.I., C.I.E.
Major the Hon'ble E. Baring, R.A., C.S.I., C.I.E.
Major-General the Hon'ble T. F. Wilson, C.B., C.I.E.
The Hon'ble C. Grant, C.S.I.

INDIAN TRUSTS BILL.

The Hon'ble MR. STOKES presented the Report of the Select Committee on the Bill to define and amend the law relating to Private Trusts and Trustees.

INDIAN EASEMENTS BILL.

The Hon'ble MR. STOKES also presented the Report of the Select Committee on the Bill to define and amend the law relating to Easements and Licenses.

INDIAN EMIGRATION BILL.

The Hon'ble MR. STOKES moved for leave to introduce a Bill to define and amend the law relating to the Emigration of Natives of India. He said that numerous suggestions for the amendment of Act VII of 1871, which regulated the emigration of natives of India to the British, French and Dutch colonies, had, from time to time, been received by the Government. Many of those which it appeared desirable to adopt dealt with minor and, comparatively speaking, unimportant points; but some proposed substantial changes, which would materially alter the working of the existing law. It had, moreover, been found that the from and arrangement of the Act were, like

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most things, susceptible of improvement. Under these circumstances, it had been thought advisable to repeal the Act, and re-enact it with all the requisite amendments. Of these amendments, he would now state to the Council the four most important.—

First, the terms "emigrate," "emigrant" and "emigration" would be so defined as to cover not only persons leaving India under a contract to labour, but also dependents of such persons. It was obvious that, for the purposes of controlling recruiters and depôts, regulating emigrant vessels, and so forth, it was as necessary to take count of dependents as of the persons who contracted to labour.

Secondly, section 26 of the Act of 1871 declared that emigration should not be lawful except from Calcutta, Madras or Bombay. Under the Bill the Governor General in Council would be empowered to establish ports, such, for instance, as Negapatam, other than those of the three Presidency-towns as ports of embarkation.

Thirdly, the Bill would enable minors to enter into contracts to emigrate. Under the English law and the law which prevailed in India (at all events in the Presidency-towns) down to the passing of the Contract Act of 1872, minors, though labouring under a general incapacity to enter into absolutely binding contracts, might make contracts for their own benefit, which would be binding on them till avoided by them within a reasonable time of coming of age. But in a recent correspondence it had been brought to notice that the effect of the Indian Contract Act of 1872 had been to make it impossible for persons under the legal age of majority (in most cases eighteen) to engage to emigrate, though emigration might fairly be said to be always for the minor's benefit. The Bill would set this right. It would declare that every person above sixteen years might himself enter into a contract to emigrate—this was in accordance with the Bengal Labour Districts Emigration Act of 1873—and it would provide that minors below that age and above the age of six years might contract through their guardians, power being reserved to the minor to rescind the contract at any time within the thirty days next following the completion of his age of eighteen years.

Fourthly, the Bill would require all agreements to emigrate to be in writing, and, if entered into within the limits of any port from which emigration was lawful, to be made with the Emigration Agent at such port, and executed in the presence of the Protector; if entered into elsewhere, to be made with a recruiter, and executed in the presence of a Magistrate. It would also lay down what such agreements must contain. At present, there was some obscurity in the law as to what constituted the contract to emigrate; and it was not absolutely necessary that any terms of service should

be settled before the emigrant left India. Most, if not all, colonies had already introduced written contracts, so that there would be no hardship in requiring their general use; the conventions with France and Holland expressly stipulated that a written contract must first be executed in India, and there would thus be no difficulty with those Powers. The requirement of a contract, moreover, marked distinctly the stage at which an emigrant became liable for breach of contract—a point which, under the present law, was somewhat uncertain. Lastly, the provision existed (in substance) in the Burma and Straits Settlements Emigration Laws. The material stipulations which the Bill would prescribe were all actually adopted by the colonies which received Indian emigrants.

If the Council gave leave to introduce the Bill, he would mention such further details as might seem necessary to be brought before the attention of the Council. At present he thought it sufficient to state, as he had done, the four principal points in which amendments would be made in the present law.

His Excellency THE PRESIDENT remarked that the question was one which had been a long time under discussion, and he found that sanction to legislate upon it was given by his predecessor, Lord Lytton. HIS EXCELLENCY had not yet had an opportunity of examining the Bill, but he hoped shortly to be able to do so.

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 20th July, 1881.

R. J. CROSTHWAITE,

SIMLA; *The 6th July, 1881.*

Officiating Secretary to the Government of India,

Legislative Department.

Govt. Central Branch Press, Simla.—No. 222 L. D.—8-7-81.—270.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., cap. 67.

The Council met at Government House, Simla, on Wednesday, the 20th July, 1881.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.G., G.M.S.I., G.M.I.E., *presiding*.
His Honour the Lieutenant-Governor of the Panjáb, K.C.S.I., C.I.E.
His Excellency the Commander-in-Chief, Bart., G.C.B., C.I.E.
The Hon'ble Whitley Stokes, C.S.I., C.I.E.
The Hon'ble Rivers Thompson, C.S.I., C.I.E.
The Hon'ble J. Gibbs, C.S.I., C.I.E.
Major the Hon'ble E. Baring, R.A., C.S.I., C.I.E.
Major-General the Hon'ble T. F. Wilson, C.B., C.I.E.
The Hon'ble C. Grant, C.S.I.

INDIAN EMIGRATION BILL.

The Hon'ble MR. STOKES introduced the Bill to amend the law relating to the Emigration of Natives of India, and moved that it be referred to a Select Committee consisting of the Hon'ble Mr. Gibbs, Major the Hon'ble E. Baring and the Mover. He said that when he had obtained leave to introduce the Bill, he had shortly stated the four substantial changes which it was intended to effect in the present law. The remaining amendments were, for the most part, in matters of detail; they were minutely specified in the Statement of Objects and Reasons, and he would therefore now merely mention a few of the more important.

In the first place, for the present definition of "Magistrate" in section 85 of the existing Emigration Act,—"any person invested with the powers of a Magistrate as defined in the Code of Criminal Procedure" (that meant a Magistrate of the first class)—the definition in the Straits Settlements Emigration Act, which allowed of the appointment of any person as a Magistrate for the purposes of the Act, had been substituted.

In the next place the Bill specified more clearly the reasons for which emigration might be prohibited by the Government of India.

Excessive mortality, and neglect to enforce in the colony the contracts made in India, and omission to furnish the Government of India with the information necessary to enable it to judge how Indian emigrants were treated, had been added to the reasons mentioned in the present Act. The Bill also defined more clearly the extraordinary power of suspending emigration which, under section 61 of the present Act, could be exercised by the Local Government on a pressing emergency; and this power had been restricted to a single case—the outbreak of plague or other epidemic disease dangerous to human life in the colony.

The last three sections of Chapter VI relating to Sub-Agents were new, and provided some much-needed clauses for the control of the local agency through which it was the practice of Emigration Agents to conduct recruiting operations. All Sub-Agents must be licensed by the Local Government; and the license, for which a fee of Rs. 30 (double that for a recruiter's license) was fixed, might be revoked on proof of misconduct. The remuneration of Sub-Agents would, like that of Emigration Agents under the present Act, be a fixed sum, and not in the form of head-money.

Perhaps the most important details were those dealt with by Chapter VIII, regarding the attestation of agreements and registration of emigrants. In this chapter, which corresponded with Part VI of the present Act, modifications had been introduced to provide for the agreement with the emigrant being executed before, and attested by, the Magistrate or the Protector; to alter the particulars required to be entered in the register; to state more clearly the reasons for which a registering officer might refuse to attest a contract; to provide for the examination of dependents as to their dependence upon the contracting emigrants and as to their willingness to accompany such emigrants; to provide for a medical examination of intending emigrants, where necessary, previous to their being registered under section 38; and, lastly, to revise the table of fees.

It was only necessary to observe, with regard to the third of these changes, that the Bill would give power, in accordance with the advice of the Government of the North-Western Provinces, to refuse attestation when the emigrant was a resident of a place beyond the jurisdiction of the Magistrate before whom he appeared. This, it was asserted, was a necessary precaution, as it was common for unscrupulous recruiters to convey intending emigrants long distances from their homes, to involve them in debt for maintenance during their journey, and thus to remove the temptation, and at the same time deprive them of the power, to return. It also often happened that an emigrant whose registration was refused by one Magistrate was taken before another in the next district, where it was hoped that the officer would be

more compliant. Power had also been given to refuse registration of a person who, if he quitted his home, would leave his family destitute, and of a married woman without the consent of her husband.

The next point of importance was in Chapter IX, relating to the conveyance of emigrants to depôts. In that chapter a provision had been added which enabled the Magistrate to order the Emigration Agent or recruiter to pay such sum as was necessary to enable an emigrant who had been rejected before arriving at the port of embarkation, or the dependent of such emigrant, to return to his home.

Then, passing over Chapter X, in which the alterations were unimportant, we came to Chapter XI, which related to emigrant vessels. The amendments in that chapter, which corresponded with Part IX of the present Act, were slight. There were some changes in the dimensions specified in section 60. The principal differences, as compared with the present law, were, first, that the height of the accommodation for emigrants was raised from 5½ to 6 feet; secondly, that *all* children under ten, instead of only those from one to ten years of age, were counted at the rate of two to one adult; and, thirdly, that the space required for each child under ten was fixed at half that required for an adult, instead of, as now, two-thirds for children between two and ten. Those changes had been recommended by the Government of Bengal as far back as 1873, and were required chiefly to improve the accommodation for infants, among whom much mortality occasionally occurred. "Compounders, interpreters and female nurses" had been added in section 63, also in accordance with the recommendation of the Government of Bengal.

Then we came to Chapter XII, relating to embarkation and departure. Section 67 declared that "no emigrant shall embark, except with the special permission of the Protector of Emigrants, until seven days have elapsed from the date of his arrival at the depôt." This was in accordance with a recommendation made by the Protector of Emigrants at Calcutta, who considered it a precaution necessary "not only to afford the opportunity of ascertaining the freedom of emigrants from latent and communicable diseases which had distinct periods of incubation, but to give such as were ill-nourished and had been recruited in famine-stricken districts some time to rest and recover themselves after their journey, and prior to undertaking what proved in all cases a trying voyage to Indian emigrants generally."

Section 68 embodied the present views of the Government of India regarding the seasons at which embarkation should be allowed. This matter had been the subject of much discussion. The conventions allowed the French and Dutch colonies a longer period than the Act allowed the corresponding British

colonies; and, in the case of the latter, it had been represented that even the period allowed by the Act was too long, since emigrants shipped late in the season for the West Indies arrived there at a very unhealthy season of the year, and were liable to great mortality in consequence. When the provisions of the existing law were framed, the embarkation seasons were settled with reference to one point only, namely, the necessity for avoiding the stormy weather encountered in the neighbourhood of the Cape of Good Hope during the Antarctic winter; consequently no impediment was offered to the shipment of emigrants at any time of the year for colonies east of the Cape. But hurricanes prevailed in the neighbourhood of Réunion between the months of November and April; and they were also prevalent in the Fiji Islands during the same season. Moreover, the necessity for landing emigrants in their place of destination at a healthy season of the year was another consideration which made it necessary carefully to regulate the period of despatch.

In the Bill, therefore, power had been taken to enable the Governor General in Council to regulate the departure of all emigrant vessels, whether bound for places to the east or west of the Cape of Good Hope. The present limits, the 31st July to the 1st March, for places west of the Cape of Good Hope, however, had been retained as a maximum; and the provision in the present Act permitting departure for such places on an emergency up to the 1st April had been struck out. Cases of loss of emigrant vessels allowed to be despatched after the 1st March, as well as heavy mortality during such voyages, had occurred, and it was thought inexpedient to continue the concession.

The special privilege of carrying emigrants at any time of the year now enjoyed by steamers had also been done away with, as being inconsistent with the regulation of the season for departure with reference to that of arrival in the colony; but, as a concession to the superiority of such vessels over sailing vessels, the time within which they might depart for places west of the Cape of Good Hope was extended from the 1st to the 15th of March.

The chapter on offences would require, and would doubtless receive, most careful consideration in Committee. The penalties provided in the present Act, sections 72 to 75, were merely fine extending to 500 rupees. It was thought necessary by the Home Department to add imprisonment, as in the Straits Settlements Emigration Act of 1877.

Section 90 had been introduced to cover the case of unlicensed persons acting as Sub-Agents.

Section 96 (as to landing emigrants at any place other than the place for which they had shipped) was new; it had also been adopted from Act V of 1877, section 44.

Section 98 of the Bill was one that would require especial consideration; it provided for the punishment of emigrants who deserted after a contract had been duly entered into with the recruiter before a Magistrate. The proposed penalty was only a fine of Rs. 20 or the cost of getting the emigrant to the depôt, whichever was greater; and in default of payment, a month's imprisonment; and the section had been so drawn as to require the sanction of the Protector of Emigrants to every prosecution instituted under it. The present law provided no punishment for that kind of desertion, the deserter's only liability being to a civil suit for breach of contract—a proceeding which was, of course, useless in most cases of the kind. There was no doubt that, in view of the class of men who worked as recruiters, and the many risks of deception and ill-treatment to which intending emigrants were exposed at their hands, it was necessary to guard the power to inflict a penalty for desertion in such cases most carefully. Still, cases had arisen, and might easily arise, of impudent deception on the part of persons who professed willingness to emigrate, and under such profession obtained board and lodging in the Mufassal, and free conveyance to the port of embarkation, where they deserted or refused to emigrate. To meet such cases the section had been devised. MR. STOKES was well aware that, in general, a mere breach of contract ought not to be an offence, and he was as averse as any one could be to making unnecessary additions to our penal law. But it must be admitted that breaches of certain contracts were proper subjects for penal legislation when committed by persons from whom it was impossible to recover damages. And for such legislation there were precedents, in India, in the Penal Code, Chapter XIX, in Act XIII of 1859, for the punishment of breaches of contract by artificers, workmen and labourers, in Act IX of 1860, section 8, for the punishment of persons employed on public works who neglected or refused to perform their engagements, and in Bengal Act VII of 1873, section 92, which provided that any emigrant to Assam, Káchár, &c., whose contract had been executed and who deserted while in transit, might be punished with imprisonment for three months. In England, too, from the time of George II, it had been found necessary to give Justices of the Peace criminal jurisdiction in disputes between master and servant. He might mention 20 Geo. II, c. 19, s. 2, 6 Geo. III, c. 25, s. 4, 4 Geo. IV, c. 34, s. 3, and 30 & 31 Vic., c. 141, s. 9.

The only other point to which it now seemed necessary to call the attention of the Council was with regard to the French colonies. The special provisions as to those colonies, which were found in Part XII, sections 63—70 of the present Act, had been omitted as unnecessary, it being considered that all emigration, whether to British or foreign colonies, should be conducted on one system. He might observe that no such special provisions had been found necessary in the case of emigration to Surinam, which had been carried on under a convention with the Netherlands Government similar to that with France. The

convention with France was now about to be amended, and if in its amended form it should be found to include any points requiring a deviation in matters of detail from the general procedure of the Bill, such points, together with the question of the adaptation of the Bill to emigration from French ports, could be left for consideration to the Select Committee, to which he hoped the Council would now refer the Bill.

His Excellency THE PRESIDENT said that he quite agreed with his hon'ble friend Mr. Stokes that section 98 of the Bill would require careful consideration, and he should like to reserve his own opinion upon it. As he had stated when the Bill was introduced, sanction to the present legislation had been given a good while ago by his predecessor, and he had not yet had an opportunity of considering the measure in detail. HIS EXCELLENCY hoped that the Committee would direct their attention, among other things, to the particular section to which Mr. Stokes had drawn attention.

The Motion was put and agreed to.

The Hon'ble MR. STOKES also moved that the Bill be published in the local official Gazettes in English and in such other languages as the Local Governments might think fit.

The Motion was put and agreed to.

ASSAM AND CHITTAGONG EMIGRATION BILL.

The Hon'ble MR. RIVERS THOMPSON moved for leave to introduce a Bill to amend the law regulating emigration to the Chief Commissionership of Assam and Chittagong. He said that the subject to which the proposed legislation referred had always been considered one of very great importance by the Government of India, and perhaps he might be allowed to say that no question which came under the cognizance of that Government had received greater supervision in all its details than that which related to the transport of labourers from the inland districts of India to other places, whether by a system of inter-provincial emigration, or by a system of colonial emigration. That which he had now to bring before the Council related to the law regulating the emigration of labourers from the interior districts of India, generally from districts in Bihár and Oudh and parts of the North-Western Provinces, to the districts under the Chief Commissioner of Assam, and, as this Bill added, to Chittagong. The law which referred to the colonies was that which his hon'ble and learned friend had referred to in his recent speech. The law now in force which regulated this inland labour emigration was Act No. VII of 1873, an Act passed by the Council of the Lieutenant-Governor

of Bengal, and which received the assent of the Governor General on the 30th of December of that year. Looking back to the proceedings connected with that Act, he thought we should see that the first attempt to establish a system of free emigration was then made. By "free emigration" he meant the emigration of natives of India to Assam without the aid and solicitation of others, or the independent efforts of tea-planters and tea-companies to obtain labour for their estates in Assam without the direct interposition of Government. For reasons to which he need not refer here —because the whole subject had been reviewed very completely in a report by a very able and intelligent Committee in Calcutta, the results of whose labours he should have to notice at a later stage—the consideration had been forced on the Government of India that many of the restrictions which now existed as regards free emigration, and free recruitment, might well be relaxed; and that many circumstances of the present day, in connection with the improved facilities of communication between Bengal and Assam, and the growingly satisfactory condition as regards comfort and prosperity of those coolies who had emigrated to Assam, favoured the conclusion that the time had come when the interests of the employer and the employed in this matter might be best served by being left to themselves without any very minute interference from Government.

The attention of the Government of India had been directed to this and to other points of inland emigration, when, about the middle of last year (he believed in May), a memorial was received from the Indian Tea Districts Association in London, of which Sir Douglas Forsyth, who was very well known in India, was the Chairman. That memorial, which was now before him, representing directly, as it naturally would do, the interests of the large and important tea-industry in Assam, brought to notice that the continued existence of this tea-industry as one of the staple industries of India was menaced by the great and increasing difficulties and drawbacks which attended its prosecution; and among the prominent causes which affected its stability and progress, it was especially pressed upon us that

"upon an adequate supply of coolie-labour at a cost calculated to leave a fair margin of profit, hinged the entire question of the future of the tea-enterprise."

It was not, of course, upon the tea-interest alone that the Government relation to that question was bound; but to show, very briefly, the extent to which tea-culture had grown within the last thirty years, he might remind the Council that, whereas in 1850 the whole area under tea-cultivation did not reach more than about 1,000 acres, in the present year, taking in all the parts of the country where the plant was grown, it extended to more than 200,000 acres; and of that acreage the greater proportion appertained to the tea-districts to which

the present labour law applied. Then, again, within the period to which he referred, the outturn of tea had increased from 250,000 lbs., or say a quarter of a million, to the respectable figure of 40,000,000 lbs. The capital invested in those districts was represented as amounting to some £15,000,000, and it was also said that there was an annual expenditure of about £2,000,000 in the maintenance of plantations and the general working of the system. What the future prospects of this industry might be, to what extent the productive area under tea-cultivation would increase, and to what point the exports of this valuable product from India would reach, it was, of course, impossible to predict; for although from the memorial it appeared that for a considerable time there had been some depression in the trade—and he was sorry to find that that depression still existed—and although a fear was entertained, from the opening out of new fields of tea-culture in Japan and Ceylon, that the general tendency might be to a permanent lowering of prices, we had the counterbalancing fact that within the last few months the markets of our Australian colonies had been opened to Indian teas, and thus the prospects of a large and extending tea-industry in India might not be so gloomy as they were sometimes represented to be. However that might be, if we had succeeded as a Government in doing something to give an impulse to this trade between India and Australia, and if we were fortunate in the endeavours being made to extend it to the United States of America, he thought we should hardly be justified in holding our hands in relieving, where we could properly do so, the difficulties which beset the tea-planting interests, established at such a large expense of time, labour and money, on the north-eastern frontier of India. What the nature of those difficulties was, he should perhaps best express if, with the permission of the Council, he might read a very brief extract from the memorial to which he had referred. Speaking directly of Assam it said that—

"Tea-culture alone, apart from other products, is capable of almost indefinite expansion. Land and capital can be found in abundance, and the sole impediment to its continuous development is the difficulty of obtaining an adequate supply of labour on terms admitting of its profitable employment. This hindrance to progress does not arise from the inability of the industry to afford the wages necessary to render labour highly remunerative to the immigrant, but, from the excessive cost of recruitment and transport largely due, in the opinion of all tea-growers, to the stringency of the labour laws."

And they went on to say that it appeared to the Association that Act No. VII of 1873, the law which he proposed to amend, might, with great advantage, be revised generally in the direction of greater simplicity and freedom of contract. It would thus be seen that the memorialists complained of the excessive cost of recruitment and transport and of the stringency in those respects of the present labour law, and they recommended the introduc-

tion of amendments in the direction of withdrawing the present restrictions on trade, and the allowance of greater freedom of contract. One definite request which they made was that the period of contract of a labourer emigrating to Assam, which under the present law was limited to three years, should be extended to a maximum of five years. Of the correctness of a great deal recorded in that memorial the Government of India had very little doubt; for, from independent returns which we had before us, it was as a matter of fact known that the cost of recruiting was steadily increasing, and that at the present time it was very much higher than it need or ought to be. Without entering into the particulars of this fact, which were fully recorded in the papers before him, and being assured of its certainty and of the fact that the experience of later years had established beyond dispute the increased facilities in communication between Bengal and Assam, it seemed to the Government quite possible, without serious dangers or risks, to enlarge the system of free emigration into the tea-growing districts; and it was in this direction that the Government of India thought that amendments might be introduced. Under the law of 1873 as it stood, though recruiting by the private agency of the employer was recognised, certain limitations and restrictions were placed upon it—that was, upon the system by which the planters tried to obtain labour for themselves, which hindered the development of that system; and it was in that direction principally that a much less unrestricted action was possible, both as extending the operation of private enterprise in a matter in which private enterprise was chiefly concerned, and also as tending to abolish the contractor system at Calcutta and elsewhere, which, in his judgment, was one of the main causes of the delay, difficulty and expense connected with emigration to Assam.

At the time when the memorial of the Association in London came under the notice of the Government of India, he should explain that the attention of the Government had also been directed to the much larger question affecting the over-population of many parts of India by the report which Mr. Caird had submitted to the Secretary of State, at his request, upon the general question. The Government of India had been asked by the Secretary of State to submit their views on Mr. Caird's observations; and, in acknowledging that letter, while it was admitted in reply that the evil existed, it was added that every effort was being made, and had been made, to diminish its ill effects by promoting the voluntary emigration of the people from overcrowded to thinly populated tracts in India. Attempts had been made to do this in Burma by a system of Government emigration, and efforts had also been similarly directed to the settlement of certain isolated tracts in the Central Provinces; so that really it was not a question which referred to the tea-interest only, but was one which, in its general consequences, affected to a great extent the

administration of the whole country. It was held that, as a matter of the utmost importance to the empire generally, attention was required to simplify and facilitate the emigration of the surplus populations of crowded districts in the Gangetic Valley and Oudh to less densely populated tracts. In one direction there existed a redundant and increasing population which the land could not adequately support or employ, and in another an abundance of uncleared but fertile soil with a bounteous and regular rainfall, ready to receive, and capable of maintaining, a large population; so that every inducement prevailed to start and promote a steady flow of emigration from one part of the country to another. It was in the knowledge of all those facts, which the memorialists represented as affecting the particular interests of Assam, and of the general question raised by the report of Mr. Caird, that the Government of India decided, in communication with His Honour the Lieutenant-Governor of Bengal and the Chief Commissioner of Assam, to refer the whole question to the consideration of a Committee. After some correspondence it was decided that the general and larger subject should be withdrawn from the cognisance of the Committee, and, as the more pressing enquiry related to emigration to the tea-districts, their attention should be directed to that measure especially. The Committee was presided over by Mr. A. Mackenzie, the able Secretary of the Bengal Government, and with him were associated not only official members under each of those administrations especially conversant with the details of emigration, but members of the mercantile community of Calcutta and of the tea-planting interest in Assam.

The Committee having reviewed the whole question in all its details have submitted through the Local Government the report which he now held in his hand.

It was upon that report that measures were now proposed to be taken for the introduction of a law to amend that which was now in force. Of the detailed recommendations of the Committee on the subject of the Bill, this was not the time to speak, but he might mention the general points upon which the Committee considered that an amendment of the present law was desirable. They said :—

" From the official and other papers laid before us, and from our own personal knowledge of the subject, we find that the present ' Labour Districts Emigration Act ' is defective in respect chiefly of the points numbered I to IV below :—

" I—In that it does not afford sufficient encouragement to free emigration.

" II—In that it imposes unnecessary restrictions upon sardárí recruiting.

" III—In that it fails to provide for the enforcement of contracts made otherwise than under the provisions of the Act itself, even in the case of imported labourers.

"IV—In respect of the remedies provided for employers in the event of the unlawful absence, idleness or desertion of their contract labourers."

It would thus be seen that the investigations of the Committee extended over the whole scope of the present emigration law; and if the Council had followed him in his statement, he thought it would be accepted that a clear necessity had arisen for fresh legislation. If permission was given to him to-day to introduce the Bill of which he had given notice, when the draft of the measure was before the Council, he would take the opportunity of pointing out its most salient points, and the necessity which existed, in his judgment, for changes in the present law. He would only now say that very few modifications of principle at any rate had been introduced upon the recommendations of the Committee in Calcutta, but that the Government was still concerned rather in contending jealously for two points: those were, that, in the first recruitment of the labourer for a distant employment he should understand clearly the nature of his engagement, for after all these labourers were credulous, ignorant and simple beings; and, secondly, that in cordially promoting, as far as possible, the system of free emigration, it was desirable to protect the labourer for at least the first few years of his residence in Assam, because it would be to him a strange and a new country.

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 3rd August, 1881.

R. J. CROSTHWAITE,

Officiating Secretary to the Govt. of India,
Legislative Department.

SIMLA;
The 20th July, 1881.

Govt. Central Branch Press, Simla.—No. 240 L. D.—29-7-81.—275.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House, Simla, on Wednesday, the 3rd August, 1881.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.G., G.M.S.I., G.M.I.E., *presiding*.

His Honour the Lieutenant-Governor of the Panjáb, K.C.S.I., C.I.E.

His Excellency the Commander-in-Chief, Bart., G.C.B., C.I.E.

The Hon'ble Whitley Stokes, C.S.I., C.I.E.

The Hon'ble Rivers Thompson, C.S.I., C.I.E.

The Hon'ble J. Gibbs, C.S.I., C.I.E.

Major the Hon'ble E. Baring, R.A., C.S.I., C.I.E.

Major-General the Hon'ble T. F. Wilson, C.B., C.I.E.

The Hon'ble C. Grant, C.S.I.

COURT FEES BILL.

The Hon'ble MR. STOKES asked leave to postpone the motion for leave to introduce a Bill to amend the law relating to Court Fees.

Leave was granted.

JHÁNSÍ ENCUMBERED ESTATES RELIEF BILL.

The Hon'ble MR. RIVERS THOMPSON moved that the Bill to provide for the relief of Encumbered Estates in the Jhánsí Division of the North-Western Provinces be referred back to the Select Committee. He said that it would be in the recollection of the Council that this Bill was in the hands of his hon'ble friend Mr. Bazett Colvin, when he was a Member of the Council, and had been carried by him to the stage when the Select Committee submitted the report on the Bill based on the lines which had been accepted by the Executive Government, and that it was ready to be passed. It was thought necessary, however, before passing it to consult the Lieutenant-Governor of the North-Western Provinces regarding it, and communications were made which had led to a reconsideration of the principle upon which the measure was founded. The line upon which the Bill had been drawn was that there should

be a State management, and a gradual redemption of debt by such management, for the relief of the proprietors of encumbered estates in Jhánsí. That course had been adopted because, at the time when the Council first considered the proposals that came up with reference to this Bill, the financial condition of the Government of India was not so favourable as it was now for a more liberal treatment of the question. A reconsideration of the position has led the Government to decide that, instead of having a direct management of the numerous petty estates of the three parganas affected,—a procedure which would involve long delays and many difficulties in execution,—the Government should advance the money directly to distressed proprietors to pay off their debts, such money being advanced on the security of the mortgage of the profits of the estates. The suggestion had found acceptance with the Government of the North-Western Provinces, and was on the lines of the original proposals made by his hon'ble friend Mr. Colvin, who was especially experienced in the affairs of the Jhánsí Districts, of which he was once the Commissioner. Accordingly, the Government having directed attention to this new form of relief, it was for the consideration of the new proposals that he now asked leave to retransfer the Bill to the Select Committee.

The Motion was put and agreed to.

COMPANIES BILL.

The Hon'ble Mr. Stokes moved for leave to introduce a Bill to amend the law relating to Trading Companies and other Associations. He said that the Bill was occasioned by the discovery, by the Registrar of Joint Stock Companies in Bombay, of a defect in section 49 of the Indian Companies Act (No. X of 1866), which did not provide clearly that the annual balance-sheet to be filed with the Registrar should be the one which had been laid before, and finally adopted and passed by, a General Meeting of the Company concerned, or that it should be filed within a prescribed time as provided by Act No. XIX of 1857.

On consideration, it was determined by the Financial Department that this defect should be removed, and it was then proposed that the opportunity should be taken to make certain other amendments in the Indian Companies Act.

Those amendments fell under two heads, first, the substantial additions suggested by the English legislation regarding Companies, since the year 1866, and, secondly, the verbal alterations suggested by the reported decisions of the English and Indian Courts.

Since 1866, the English Companies Act, from which our Act No. X of 1866 was for the most part copied, had been amended by 30 & 31 Vic., c. 131, 33 & 34 Vic., c. 104, and 40 & 41 Vic., c. 26.

Those Statutes provided—

(i) that a limited Company might, if it declared its intention to do so, either by the memorandum of association or by special resolution, have directors with unlimited liability, such liability to be enforceable only when the Company was being wound up and the corporate assets (including the contributions of ordinary members) were insufficient to pay its debts or the costs of the winding-up.

(ii) that a Company might, by leave of the Court, reduce the aggregate amount of its nominal capital, or diminish the amount of the shares, but saving the rights of creditors who were ignorant of the proceedings.

(iii) that shares might be subdivided, as we found it desirable to do in the case of the Presidency Banks.

(iv) that a Company might have some shares fully paid up and others not, and that dividends might be paid in proportion to the amount paid up on each share.

(v) that a transfer of shares should be registered at the request of the transferor, subject to the same conditions as if the request were made by the transferee.

(vi) that in the case of limited shares fully paid up share-warrants might be issued to bearer, and the shares would thereupon be transferred by delivery of the warrant. Coupons might be annexed entitling the bearer to receive dividends.

(vii) that every prospectus of a Company and every notice inviting persons to subscribe for shares in a joint stock company should specify the dates of and parties to any contract which had been previously made by the company or its promoters or directors, and might reasonably influence a person in determining him to take or not to take shares in the Company (*Sullivan* v. *Mitcalfe*, 49 L.J. Q. B. 815).

(viii) that a general meeting must be held within four months after registration.

(ix) that a contributory should not be qualified to present a winding-up petition unless the members were reduced to less than seven, or unless he had held his shares for at least six of the previous eighteen months, or unless the shares had devolved on him through the death of a former holder. This would prevent the practice of speculators buying shares in failing companies with a view to wind them up and share in the plunder.

(x) that when the High Court had made an order for winding-up a Company, it might refer all subsequent proceedings to a District Court (to use the Indian term corresponding to the English 'County Court') and transfer a winding-up from one District Court to another.

(xi) that when a compromise was proposed between a company that was being wound up and its creditors, the Court might order a meeting of such creditors; and that if a majority representing three-fourths in value agreed to the compromise, it should, when sanctioned by the Court, be binding.

He had not mentioned the amendment made by 30 & 31 Vic., c. 131, section 37 (as to the manner in which contracts might be made on behalf of companies), because the Indian legislature had anticipated it in section 42 of Act No. X of 1866.

It seemed to the Government of India that the amendments which he had specified should be made for two reasons, first, because they were good in themselves, and, secondly, because it was desirable that the laws relating to such a subject as mercantile companies should be as nearly as possible the same in India as in England. Any differences in such laws led to mistakes in the Indian Courts, and must, to some extent, discourage English investors from putting their money into Indian companies. The provisions as to the unlimited liability of directors had been stigmatised in England as certain to drive from the direction men of wealth and position and to substitute in their places needy adventurers. But he need hardly say that the experience of fourteen years had belied this prophecy. He might add that, under the provisions in question, a director would not be liable *as such* for more than a year after he had ceased to hold office, and that he would not be liable *as such* in respect of any debt of the company contracted after he had ceased to be a director.

The reported decisions of the Indian Courts regarding the law applicable to trading companies were, so far as he knew, only thirty-two in number, and of those only two or three turned upon the wording of Act No. X of 1866. But

there was a large number of English decisions bearing on the wording of the corresponding sections of the English Statute of 1862, and the Bill which he now asked leave to introduce would embody the result of an examination of those decisions.

The Motion was put and agreed to.

JHÁNSÍ ENCUMBERED ESTATES RELIEF BILL.

The Hon'ble MR. RIVERS THOMPSON moved that Major the Hon'ble E. Baring be added to the Select Committee on the Bill to provide for the relief of Encumbered Estates in the Jhánsí Division of the North-Western Provinces.

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 17th August, 1881.

R. J. CROSTHWAITE,
Officiating Secretary to the Govt. of India,
Legislative Department.

SIMLA ;
The 3rd August, 1881.

Govt. Central Branch Press, Simla.—No. 273 L. D.—8-8-81.—270.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House, Simla, on Wednesday, the 17th August, 1881.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.G., G.M.S.I., G.M.I.E., *presiding.*

His Honour the Lieutenant-Governor of the Panjáb, K.C.S.I., C.I.E.

His Excellency the Commander-in-Chief, Bart., G.C.B., C.I.E..

The Hon'ble Whitley Stokes, C.S.I., C.I.E.

The Hon'ble Rivers Thompson, C.S.I., C.I.E.

The Hon'ble J. Gibbs, C.S.I., C.I.E.

Major the Hon'ble E. Baring, R.A., C.S.I., C.I.E.

Major-General the Hon'ble T. F. Wilson, C.B., C.I.E.

The Hon'ble C. Grant, C.S.I.

COURT-FEES BILL.

The Hon'ble MR. STOKES moved for leave to introduce a Bill to amend the law relating to Court-fees. He said that in the year 1879 Mr. F. R. Cockerell of the Bengal Civil Service, who had been in charge of the Bills which became respectively Act XVIII of 1869, Act VII of 1870, and Act I of 1879, and was therefore thoroughly familiar with the Indian Stamp-law, was instructed by the Government of India to place himself, on arriving in England, in communication with Messrs. De La Rue & Co., the eminent paper-makers and stamp-manufacturers. He was to bring before them the whole question of the stamp forgeries recently discovered in Oudh and the North-Western Provinces, and to submit, for their inspection and examination, some specimens of those forgeries, together with the mechanical apparatus employed, or supposed to have been employed, in the manufacture of the forged labels. He was then, in consultation with Messrs. De La Rue, and with the aid of their practical experience, to devise some kind of stamping machinery which would afford due protection to the revenue against the fraudulent practices by which its security had been menaced from time to time, and to submit, as the result of this conference, his conclusions on the whole question, and any recommendations for the alteration of the existing system of collection of fees, stating at the same time how far those conclusions and recommendations had the concurrence of that firm.

Mr. Cockerell had now submitted his report. The principal question for consideration was whether adhesive labels were to be retained for the collection of court-fees wholly or partly.

The frauds to which the use of adhesive stamps had given rise were of two kinds:—

1*st*.—Abstraction of the labels from the papers to which they had been affixed and re-use of such labels;

2*nd*.—The production of counterfeit labels and making them pass current as genuine.

Messrs. De La Rue were of opinion that from the stamp-manufacturers' point of view there was no way of preventing such attempts at counterfeiting adhesive labels as had been recently discovered, or rendering their accomplishment more difficult. The Government of India had therefore to choose between persevering with the adhesive stamps and a partial or complete recourse to the use of stamped papers in lieu of the labels. Messrs. De La Rue advocated a complete re-introduction of stamped papers for the collection of court-fees generally. They were of opinion that it was more profitable for forgers to work upon labels of the smaller values, as they passed with less scrutiny than labels of the higher values, and that the forgeries discovered were of so clumsy and inaccurate a nature that they should have been detected at once with ordinary care. The real difficulty and danger to the revenue, Messrs. De La Rue considered, arose out of the other kind of fraud, namely, the abstraction and re-use of the adhesive labels.

On the other hand, Mr. Cockerell was of opinion that the wisest course, under the present circumstances, would be a partial substitution of stamped papers for adhesive labels. If after a fair trial of such a measure it was found necessary to go further in the direction of the discontinuance of the use of adhesive labels, such progressive action would not have been rendered more difficult by the adoption of what he proposed, inasmuch as his proposals did not embrace any considerable initial outlay, the value of which would be lost in the event of any closely following change of system. Mr. Cockerell also thought that, considering the great difficulty which forgers had in this country in manufacturing forged stamps rapidly, owing to deficient mechanical appliances and the great expense incurred in paying persons to pass the counterfeit labels, it was unlikely that forgers would work upon the smaller values. With regard to the abstraction and re-use of adhesive labels, he was of opinion that an examination of the cases in which such frauds had been committed showed that they might have been prevented by a due examination and cancellation of the labels affixed to documents when presented to the court or office in which

the fraud occurred. He therefore came to the conclusion that it would be premature to condemn a system the checks and precautions for the proper working of which had never been fairly and perseveringly enforced.

The great advantage which the substitution of stamped papers for adhesive labels in the collection of the court-fees of the higher values instead of those of the lower values possessed was that the increase of expenditure entailed by the former change was very much less than that entailed by the latter change. Mr. Cockerell calculated that the average annual consumption of stamps of the value of ten rupees and upwards was less than Rs. 3,00,000 out of a total consumption of more than 25½ millions. Then the cost of the lower values of adhesive labels was two shillings and sixpence per thousand, while the cost of the smallest size of stamped papers was 37 shillings per thousand. Besides this vast difference in the cost of production, the introduction of stamped papers involved a great increase in the cost of carriage.

For these reasons Mr. Cockerell recommended that stamped papers should be used for the collection of all court-fees of ten-rupee value and upwards, and that the use of adhesive labels in respect of all denominations of fees below that amount should be continued. His reasons for thinking that the change should commence at the ten-rupee denomination were briefly as follows:—

(1) that this would include all values of substantial amount in regard to which the greatest risk to the revenue from forgeries was to be apprehended;

(2) that, to avoid expense in the introduction of stamped papers, it would be necessary to manufacture them on the same pattern, using the same plates, &c., as the stamped papers used under the Indian Stamp Act, 1879. The classification of stamped papers for court-fees should, therefore, be the same as that for stamp-duties, and class III of the latter commenced at ten rupees;

(3) that it was of great importance that the denominations below one rupee should be represented by adhesive labels, as these denominations were specially required for the purpose of making up the fractional parts of five rupees where the whole value of the stamp required exceeded ten rupees.

Mr. Cockerell proposed no change in the present scale of fees payable in suits the amount or value of the subject-matter of which did not exceed five thousand rupees. With regard to the fees chargeable in the case of suits of higher values, he proposed to re-adjust the scale of fees prescribed by Schedule I of the Court-fees Act so as to reduce materially the number of denominations

of stamps required for the collection of fees. The sliding scale fixed by the present law comprised no less than one hundred and thirty-five denominations of fees above Rs. 275, which was the fee chargeable on a suit for an amount or value of Rs. 5,000. To meet the requirements of this scale very many new denominations of stamped papers would have to be provided. Great additional expense would have to be incurred in making the proposed change, while the new stamped papers would, comparatively speaking, be seldom used, the number of suits for large amounts forming so small a portion of the entire litigation of the country.

The greatest enhancement in the fees which this change in the law would involve would be in the cases of suits for seven thousand and of suits for ten thousand rupees. In the case of the former suits there would be an increase of twenty rupees and in the case of the latter an increase of fifty. In the case of suits for sums exceeding ten thousand rupees the increase would be less in proportion. Thus, the fee on a suit for fifteen thousand rupees would be only twenty-five rupees above its amount under the existing scale, and the fee on suits for Rs. 20,000 would be the same as, and that on a suit for Rs. 30,000 only twenty-five rupees more than, the present fee. The proposed increase, it was calculated, affected only about one per cent. of the entire litigation of the country.

Mr Cockerell calculated that the annual cost of substituting stamped papers for all values of ten rupees and upwards and continuing the use of adhesive labels for values below ten rupees would be about £8,600, or an increase of rather more than £5,000 over the present cost. The total annual cost of substituting stamped papers in respect of all denominations of court-fees and discontinuing the use of labels absolutely would be about £56,000, or an increase over the present expenditure for manufacture alone of about £53,000.

The Government of India had resolved to adopt Mr. Cockerell's recommendations, and it was therefore necessary to legislate and to amend the first article of Schedule I of the Court-fees Act, VII of 1870, in accordance with his suggestions. The Act would also be amended so as to prevent the fraudulent removal and re-use of adhesive labels. And the opportunity would be taken to make certain other amendments in the law which the reported decisions of the High Courts and the experience of the past ten years had shown to be desirable.

The Motion was put and agreed to.

PANJAB LAWS ACT AMENDMENT BILL.

His Honour the LIEUTENANT-GOVERNOR of the Panjáb moved for leave to introduce a Bill to amend the Panjáb Laws Act, 1872. He said that the object of this amending Bill was to place watchmen who were appointed to

perform police duties in municipalities under the same legal control in regard to their duties as watchmen of the same class in villages. The alteration in the Act was a very small one, and was rendered necessary by the peculiar circumstances of the case. By Act No. XV of 1875 the Panjáb Laws Act of 1872 was amended, and power was taken to frame rules to regulate the duties of village watchmen. Municipalities were expressly excluded from the operation of the amended law, as it was supposed that the police duties in all municipalities would be invariably performed by organized police and not by watchmen; it has been found however that the expense of organized police is greater than the funds of the several municipalities can bear; and in order to reduce the expenditure on the police it is necessary to use the services of watchmen instead of police. Under the existing law no power existed by which the rules to regulate the duties and responsibilities of such watchmen in municipalities could be framed. The Bill which he asked permission to introduce would confer those powers. The necessity for the change had been admitted by the Government of India, as there appeared no way by which the powers sought could be conferred or exercised under the existing law.

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 31st August, 1881.

R. J. CROSTHWAITE,

SIMLA;
The 17th August, 1881.

Officiating Secretary to the Government of India,
Legislative Department.

Govt. Central Branch Press, Simla.—No. 305 L. D.—25-8-81.—270

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House, Simla, on Wednesday, the 31st August, 1881.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.G., G.M.S.I., G.M.I.E., *presiding*.

His Honour the Lieutenant-Governor of the Panjáb, K.C.S.I., C.I.E.

His Excellency the Commander-in-Chief, Bart., G.C.B., C.I.E.

The Hon'ble Whitley Stokes, C.S.I., C.I.E.

The Hon'ble Rivers Thompson, C.S.I., C.I.E.

The Hon'ble J. Gibbs, C.S.I., C.I.E.

Major the Hon'ble E. Baring, R.A., C.S.I., C.I.E.

Major-General the Hon'ble T. F. Wilson, C.B., C.I.E.

The Hon'ble C. Grant, C.S.I.

COURT-FEES BILL.

The Hon'ble MR. STOKES introduced the Bill to amend the law relating to Court-fees, and moved that it be referred to a Select Committee consisting of the Hon'ble Mr. Gibbs, Major the Hon'ble E. Baring and the Mover. He said that in addition to the alteration of the fees in the case of certain suits for high values, to which he had called the attention of the Council when moving for leave to introduce this Bill, the principal amendments which would be made in the present law by the Bill were the following:—

In clause (*a*), section 36, of the Bill, corresponding to clause (*a*), section 27, of the present Act, power was given to the Local Government to make rules for regulating the supply and sale of court-fee stamps, the persons by whom alone such sale is to be conducted, and the duties and remuneration of such persons. The Local Government had similar powers under the Indian Stamp Act, and such powers would be useful in preventing frauds against the revenue. It was easier to detect the fraudulent removal and re-use of labels when there were means of tracing the persons by whom and to whom the labels were sold. If the stamp-vendors were placed under the control of the Local Government and sales by non-authorized persons prohibited, means could be provided for tracing the vendors and purchasers of stamps with respect to which fraud was suspected.

This amendment had involved other changes in the law. In order to enforce the rules made under clause (*a*), section 36, a penalty was provided by section 41 for breach of the Rules by authorized vendors and for the sale of stamps by a person not authorized. Then, as no one but a duly authorized person could sell stamps, section 48 provided for making an allowance for stamps which a person has purchased but afterwards finds that he has no use for.

In order to prevent the fraudulent removal and re-use of labels, it was necessary to provide for the proper cancellation of stamps. The present law (section 30) directed that cancellation should be effected by punching out the figure-head, so as to leave the amount designated on the stamp untouched, and that the part removed by punching should be burnt or otherwise destroyed. These provisions had not been found to work well in practice. The duty which they impose had not been fully performed, and experience had shown that there was more chance of getting the responsible officers concerned to observe regulations of this kind when they were prescribed by rules which could be adapted to the varying circumstances of the different provinces of the empire. Accordingly, section 39 of the Bill gave each Local Government power, with the previous sanction of the Governor General in Council, to make rules for regulating the mode of cancelling stamps and the persons by whom such cancellation was to be effected.

The other amendment involved by Mr. Cockerell's proposals was the alteration in the scale of *ad valorem* fees: the cause of this change in the law had been already explained. In suits where the amount or value of the subject-matter in dispute exceeded Rs. 5,000, instead of charging a fee of ten rupees for every Rs. 250 or part thereof in excess of Rs. 5,000 up to Rs. 10,000, the Bill provided a charge of Rs. 25 for every Rs. 500 or part thereof. When such amount or value exceeded Rs. 10,000, instead of a fee of fifteen rupees for every Rs. 500 or part thereof in excess of Rs. 10,000 up to Rs. 20,000, the Bill provided a fee of Rs. 25 for every Rs. 1,000 or part thereof up to Rs. 25,000. So the next class of suits, instead of ranging from Rs. 20,000 to Rs. 30,000 with an additional fee of Rs. 20 for every Rs. 1,000 or part thereof in excess of Rs. 20,000, ranged from Rs. 25,000 to Rs. 50,000 with an additional fee of Rs. 100 for every Rs. 5,000 or part thereof in excess of Rs. 25,000. The next class of suits, instead of ranging from Rs. 30,000 to Rs. 50,000, was to range from Rs. 50,000 to Rs. 4,00,000 with an increased fee of Rs. 100 on every Rs. 25,000 or part thereof. Lastly, instead of a fee of Rs. 25 for every Rs. 5,000 or part thereof in excess of Rs. 50,000, the Bill prescribed a fee of Rs. 100 for every Rs. 50,000 or part thereof in excess of Rs. 4,00,000.

The Bill also provided in section 42 a penalty for the fraudulent possession of used and cancelled stamps which had been removed from the documents to which they have been affixed. The fact of a person having such stamps in his possession was a clear indication of an intent to use them fraudulently.

A penalty had also been provided for failing to file the statement on oath of all property received or realized under a certificate granted under Act No. XL of 1858, Act No. XXVII of 1860, Act No. XX of 1861, or Bombay Regulation VIII of 1827. At present the law requiring such statements to be furnished might be evaded to the detriment of the revenue, for the only penalty was cancellation of the certificate, and default in filing the statement was probably in many cases never brought to the notice of the Court.

The other changes were comparatively unimportant, and were all specified in the Statement of Objects and Reasons.

MR. STOKES continued as follows:—

"In conclusion, I wish to repeat the remark which I made on moving for leave to introduce this Bill, namely, that the Government of India in the Financial Department has originated the present legislation. I say this because it is sometimes asserted that the Legislative Department originates projects of law, and is therefore answerable for what persons, ignorant of the legislative requirements of this vast empire, choose to stigmatize as 'over-legislation.' No assertion could be more groundless. No Government measure is ever introduced into this Council except by order of the Secretary of State or at the instance of one or other of the Executive Departments. Take, for example, the eighteen Acts passed during this year. The first was introduced at the instance of the Foreign Department, the third and seventeenth at the instance of the Financial Department, and all the rest at the instance of the Home Department. So long as such assertions were made merely by Indian newspapers, one could afford to treat them with contemptuous silence. But when a periodical like the *Quarterly Review*,* with the influence which in England is always possessed by a combination of respectability, age and dulness, to give point to an attack on the Department over which I have the honour to preside, quotes a document that does not exist, and never has existed,† and declares (with a base insinuation) that, 'so long as the Legislative Department of the Government of India continues to exist, its existence must be justified by its activity,' it is time to put the public in possession of the facts of the

* No. 303, p. 76, in an article on Sir Richard Temple's *India* in 1880.

† A report of a Select Committee describing the Criminal Procedure Code of 1872 as 'bulky and ill-drawn.'

case. The Legislative Department was established in 1869, and the express condition on which it was established was that it should not be, in respect of Government measures, an originating or initiating department, and that its proper function, in respect to such measures, was to clothe with a technical shape projects of law of which the policy had been affirmed elsewhere. That this condition has been substantially fulfilled, so long at least as Sir Henry Maine, Sir Arthur Hobhouse and myself have held the office of Law Member, I can assert with truth, of my own personal knowledge. With the exception of the Bills to repeal obsolete enactments, our projects of law have always been framed and introduced either by desire of the Secretary of State (as in the case of the new Code of Criminal Procedure), or at the instance of the executive departments of the Government of India. And those departments, I would add, have in most cases been moved to legislate by one or other of the Local Governments.

"As to over-legislation, the erroneous ideas prevalent on this subject were exposed, twelve years ago, by Sir Henry Maine in a paper published in the Supplement to the *Gazette of India* for 19th June, 1869. There he points out and proves, first, that next to no legislation originates with the Government of India, secondly, that the great bulk of the legislation of this Council is attributable to its being the local legislature of many Indian Provinces, thirdly, that we seldom meddle with private rights: we only, or almost only, create official duties. Lastly, with unerring tact, he puts his hand on the most important source of legislation—the growing influence of Courts of Justice and of legal practitioners. 'Our Courts,' he writes, 'are becoming more careful of precise rule both at the top and at the bottom. The more careful legal education of the young civilians and of the younger Native judges diffuses the habit of precision from below; the High Courts in the exercise of their powers of supervision are more and more insisting on exactness from above.'

"He goes on to say, in words which I will not attempt to abridge; for notwithstanding all that has been done during the past twelve years, they apply to present circumstances almost as closely as to those that existed when he wrote:—

"'Now the law of India is at present, and probably will long continue to be, in a state which furnishes opportunity for the suggestion of doubts almost without limit. The older written law of India (the Regulations and earlier Acts) is declared in language which, judged by modern requirements, must be called popular. The authoritative Native treatises on law are so vague that, from many of the dicta embodied in them, almost any conclusion can be drawn. More than that, there are, as the Indian Law Commissioners have pointed out, vast gaps and interspaces in the substantive law of India outside the Presidency-towns; there are subjects on which no rules exist, and the rules actually applied by the Courts are taken a

good deal at haphazard, from popular text-books of English law. Such a condition of things is a mine of legal difficulty. The Courts are getting ever more rigid in their demand of legal warrant for the actions of all men, officials included. The lawyers who practise before them are getting more and more astute, and render the difficulty of pointing to such legal warrant day by day greater. And unquestionably the Natives of India, living in the constant presence of Courts and lawyers, are growing every day less disposed to regard an Act or order which they dislike as an unkindly dispensation of Providence, which must be submitted to with all the patience at their command. If British rule is doing nothing else, it is steadily communicating to the Native the consciousness of positive rights, not dependent on opinion or usage, but capable of being actively enforced.

" 'It is not, I think, difficult to see how this state of the law and this condition of the Courts and Bar renders it necessary for the Local Governments, as being responsible for the efficiency of their administration, to press for legislation. The nature of the necessity can best be judged by considering what would be the consequences if there were no legislation, or not enough. A vast variety of points would be unsettled until the highest tribunals had the opportunity of deciding them, and the government of the country would be to a great extent handed over to the High Courts, or to other Courts of Appeal. No Court of Justice, however, can pay other than incidental regard to considerations of expediency, and the result would be that the country would be governed on principles which have no necessary relation to policy or statesmanship. It is the justification of legislation that it settles difficulties as soon as they arise, and settles them upon considerations which a Court of Justice is obliged to leave out of sight.

" 'The consequences of leaving India to be governed by the Courts would, in my judgment, be most disastrous. The bolder sort of official would, I think, go on without regard to legal rules, until something like the deadlock would be reached with which we are about to deal in the Panjáb. But the great majority of administrative officials, whether weaker or less reckless, would observe a caution and hesitation for which the doubtful state of the law could always be pleaded. There would, in fact, be a paralysis of administration throughout the country.'

" The most important of the territories for which we are exclusively the legislature, the territory from which the cry against 'over-legislation' comes with the greatest persistence, is the North-Western Provinces. How many Acts affecting those Provinces and their thirty-two millions were passed last year? Only seven: the Act to confer certain powers on religious societies, which does not apply to Hindús or Muhammadans; the Cantonment Act, which does not affect the bulk of the community; the Act to amend the License Act, a mere taxing measure; the Act (of six lines) to correct a clerical error in the Limitation Act; the Kázís Act, which is merely extendible at the option of the Local Government, and will, when extended, only affect Muhammadans; the Vaccination Act, which applies only to the municipalities to which it may be extended by the Local Government in compliance with the wish of a majority of the Municipal Commissioners, and to the Cantonments to which it may be extended by the

Local Government; and lastly, the Census Act, which has merely a temporary operation. Can this be honestly called 'over-legislation'? When we consider the 'vast gaps and interspaces' in our substantive law which still exist, notwithstanding Sir Henry Maine and the Law Commissioners, should we not rather be accused of under-legislating?

"In truth, my Lord, even if the Legislative Department were, under the Rules for the Conduct of Business, competent to originate projects of law, and even if we were anxious to 'over-legislate,' we have not the time to do so. Our non-legislative functions are growing more and more engrossing. The title of the Legislative Department is now, and has long been, to a large extent a misnomer. It should be 'Judicial and Legislative Department'; for since 1872 not only have all the rules which the Governor General in Council is authorised by many Acts to make or to sanction been sent to us for consideration, but the executive departments of the Government of India have been empowered, by the Rules for the Conduct of Business, to consult us on—

'(*a*) the construction of Statutes, Acts and Regulations;
(*b*) cases involving general legal principles;
(*c*) proposed amendments of the law; and
(*d*) notifications to be issued under any enactment.'

"Of this power the executive departments have largely availed themselves; for during the five years ending with 1880 the average annual number of references (many of them involving questions of much difficulty) made to and answered by the Legislative Department has been 420; and this year the number will be higher, 363 having been made up to yesterday."

The Motion was put and agreed to.

The Hon'ble MR. STOKES also moved that the Bill be published in the local official Gazettes in English and in such other languages as the Local Governments might think fit.

The Motion was put and agreed to.

PANJAB LAWS ACT AMENDMENT BILL.

His Honour the LIEUTENANT-GOVERNOR of the Panjáb introduced the Bill to amend the Panjáb Laws Act, 1872, and moved that it be referred to a Select Committee consisting of the Hon'ble Messrs. Stokes and Thompson and the Mover. He said that in asking for leave to introduce the Bill he had explained the object of it, and he had no wish to add to the remarks then made.

The Motion was put and agreed to.

His Honour the LIEUTENANT-GOVERNOR of the Panjáb also moved that the Bill be published in the *Panjáb Government Gazette* in English and in such other languages as the Local Government might think fit.

The Motion was put and agreed to.

BURMA FORESTS BILL.

The Hon'ble Mr. RIVERS THOMPSON presented the Report of the Select Committee on the Bill to amend the law relating to forests, forest-produce and the duty leviable on timber in British Burma, and moved that the Report be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. RIVERS THOMPSON then moved that the Bill as amended be passed. Before this motion was put to the Council he wished to make a few observations upon some of the more prominent points in the Bill which had come under the consideration of the Select Committee. After its introduction the Bill had been referred to the Local Government, and we had received from the Chief Commissioner of British Burma a report which embodied the views of a great many local officers and of the two Conservators of Forests in that province. The whole of the details of the Bill had been very carefully considered and an excellent report submitted. Generally, the Bill, as he had stated before, proceeded on the lines of the Indian Forest Act of 1878, but there were certain particulars in which modifications were necessary to make that law applicable to the particular circumstances of British Burma. In submitting the report of the Select Committee, it would be seen that in a great majority of the points on which local opinion had been expressed, they had adopted the views which the Chief Commissioner, advised by his forest-officers, had submitted for our consideration. But there were one or two important points on which the Select Committee had differed from the Local Government, and perhaps it would be as well to draw the attention of the Council to these, without enlarging upon the verbal and other details by which the original Bill had been amended. In the section relating to definitions, two changes of some consequence had been made: one in the definition of "forest-officer," which now included officers appointed by the Government of India, in addition to those appointed by the Local Government, because Conservators and Assistant Conservators were appointed by the Governor General in Council; and a second alteration, which defined "land at the disposal of Government" to mean—

"(*a*) land in respect of which no person has acquired the status of a landholder under section seven of the Burma Land and Revenue Act, 1876;

"(*b*) land in respect of which no person has acquired any right created by grant or lease made by, or on behalf of, the British Government."

That would cover a great deal of the repetition which occurred in the previous Bill, and was therefore not without its value in the understanding and working of a large measure. Again, one of the principal points to which the Chief Commissioner took exception was with reference to section four of the Bill. That section was as follows:—

"Nothing in the Burma Land and Revenue Act, 1876, shall be deemed to affect or ever to have affected any right by which one person is entitled to remove and appropriate, for his own profit, any part of the soil belonging to another person or to the Government, or anything growing in, or attached to, or subsisting upon, the land of another person or of the Government; and nothing in this Act shall be *deemed* to affect the provisions of sections twenty and twenty-one of the Burma Land and Revenue Act, 1876."

And with reference to this section, the Chief Commissioner said—

"Section four was not in previous drafts of the Bill, nor was it proposed by the Local Administration. Its purport apparently is to declare that the Burma Land and Revenue Act did not override or extinguish easements as defined in the Indian Limitation Act, 1877. So far as is known in Burma, no Court of Justice and no person whatever has ever raised any question that would require to be set at rest in this particular way. If it is intended to safeguard the claims of Karens and others who practise *toungya* cultivation, then the only person against whom such safeguarding is needed is the Government. Now the provisions of the present Bill and the past history of the Government relations with *toungya*-cutters for the last 25 years show that Government has treated the interests of these people with the utmost tenderness and consideration."

Practically that was the effect of the now section. The Chief Commissioner went on to say—

"On the general principles that it is a great pity ever to make a law that is not shown to be needed, and that it is inexpedient to create by legislation vague undefined rights or claims, the scope of which cannot be foreseen, the Chief Commissioner and his officers strongly advise that this section be omitted."

However, in considering the subject, the Select Committee came to the conclusion that it was necessary to retain the section; because, though the Land Revenue Act of British Burma referred to easements as acquired under the Limitation Act of 1871, it did not cover the more extended definition of easements as defined in the later law of 1877, and as it was indisputable that such rights did exist in Burma, and that they were in fact the particular claims to which the attention of Forest-Settlement-officers had to be directed, it was absolutely necessary by this addition to secure that those easements should be saved and the section was simply therefore a declaration of the law as it at present existed.

In section eleven a material addition was made in the Bill, in connection with the claims relating to the practice of *toungya* cultivation, and how they were to be dealt with. The Council were aware that the system of *toungya* cultivation was one which extended to different parts of India. We found it under different names in Bombay, Assam, Bengal and elsewhere, and it was generally acknowledged that it was a very wasteful and destructive system of cultivation. He would best describe it as it was worked in Burma in the words of the Chief Commissioner. He said—

"It may be well to explain here what an ordinary *toungya*-cutter's proceedings are. He cuts down the forest on three to five acres this year, burns the timber and brushwood when dry, sows his rice in the ashes, and reaps it in the cold season. Next spring he will go on to another plot of forest and treat that in the same way. Meanwhile bamboos and underwood grow up on the plot he has abandoned. For a period of seven to fourteen years he takes up new plots of forests, and at the end of that period he may return to his or some of his neighbour's old clearings and begin the process over again; or he may, if the spirit moves him, go off to another valley and cut *toungyas* there, returning after twenty or twenty-five years to his old ground. It has been argued, and it is even now held by some, that the *toungya*-cutter has rights of property in the areas of forest he has cut down in past years and in the land he cultivates each year, just as an ordinary raiyat has in his fallow land and his rice land. The Government of India has repeatedly repudiated this view; and, indeed, the view cannot be accepted if we are to preserve the forest at all in the interests of the general population, present and future. The provisions of the present Bill and the whole history of our dealings with *toungya*-cutters in reserves show that the Government and its officers are scrupulously careful to treat these people tenderly. Paragraphs 118 and 119 of Mr. Brandis' valuable report of 1881 on the Burma Forests enter fully into this matter and give illustrations. But at the same time, while the *toungya*-cutters are treated well, it is most undesirable that doubts should exist whether or not these people have not rights of landholders, or rights of property in the forests they cut down. And, therefore, it is proposed to set these doubts at rest by the additional section now submitted."

And the additional section which he (the Chief Commissioner) proposed declared that the *toungya* practice did not convey any right over the land.

The necessity for such a declaration in the present Bill was not apparent, for it could not be overlooked that in the Land Revenue Act of British Burma there was a provision especially which saved every practice of that kind from giving rights such as it was now wished to protect by a special section in the Bill. Under the twenty-second section of the Land Revenue Act it was expressly provided that no person could acquire, by length of possession or otherwise, any right over lands which had been allotted by the rules framed under section 21 to tribes or families practising *toungya* cultivation.

It would therefore be mere surplusage to add to the present Bill any section merely expressive of such a declaration, and the Select Committee had decided

not to include it. However they recognized, as the Chief Commissioner and any one acquainted with British Burma would recognize, the valuable assistance which those *toungya*-cutters afforded to Forest-officers in a great many matters; and, therefore, section eleven provided for the complete investigation of all claims relating to this method of cultivation in land which was to constitute a reserved forest, and enabled the Forest-Settlement-officers to prescribe the limits within which the practice might be carried on and continued.

MR. RIVERS THOMPSON would also draw attention to Chapter III of the Bill, which was a new one, and related to the constitution of village-forests. There were at present no village-forests in Burma, but it was thought desirable that Government should take the power of assigning certain areas of its own in the neighbourhood of villages for the use of their inhabitants, under the condition that teak or other specially reserved trees should remain the property of Government. The establishment of such forests would be a great boon to the people; and it had been found by experience that it was quite possible in Burma to combine the protection and good management of a teak-producing forest with a free user of bamboos or other woods required by the people for all domestic purposes.

The chapter to which he now alluded would give the Chief Commissioner the power of constituting such village-forests and regulating the use of them.

Referring to Chapter IV of the Bill, the Chief Commissioner proposed to maintain the ancient and universally recognized right of the State to all teak trees, wherever situate, for a period of five years, that is, for such time as would enable the Government to utilize the valuable trees, after which he considered the right might be conveniently abandoned. At the same time he thought that all teak trees situated in land at the disposal of Government within the meaning of the definition should always be reserved. As the Government rights in the teak tree as a royal tree are recognized in Burma, even when the tree stands on land the property of a private person, the Select Committee had agreed that these rights should be provided for in the Bill, and we have therefore, in section 35, declared all such trees to be the property of Government. It was thought, however, that, instead of declaring, as proposed, that teak trees standing on land not at the disposal of Government should be abandoned at the close of a fixed period of five years, it would be advisable to give the Chief Commissioner power to declare that such trees shall cease to be the property of Government and to be reserved trees. If it were enacted that the teak trees should cease to be the property of Government at the end of five years, the Conservator would probably be compelled to sell

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a great number of them at one time, and, perhaps, at a time when the price of teak timber was low. It seemed unnecessary to incur the risk of a loss of Government property. The Bill as drawn under clause (*c*), section 35, confers upon the Chief Commissioner ample power to deal with the matter as the circumstances in each case might require.

He did not think he had any other observations to make with reference to the Bill. The subject had been under consideration by the Local Government for several years, and since its return to us here had been carefully reviewed both by Mr. Brandis and Mr. Baden-Powell, and in all its details had been thoroughly scrutinized by the Legislative Department.

The Motion was put and agreed to.

SINDH INCUMBERED ESTATES BILL.

The Hon'ble MR. GIBBS presented the Report of the Select Committee on the Bill to amend the Sindh Incumbered Estates Act, 1876.

BROACH AND KAIRA INCUMBERED ESTATES BILL.

The Hon'ble MR. GIBBS presented the Report of the Select Committee on the Bill to amend the Broach and Kaira Incumbered Estates Act, 1877.

The Council adjourned to Wednesday, the 7th September, 1881.

R. J. CROSTHWAITE,

SIMLA;
The 31st August, 1881.

Officiating Secretary to the Government of India,
Legislative Department.

Govt. Central Branch Press, Simla.—No. 329 L. D.—8-9-81.—270.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House, Simla, on Wednesday, the 7th September, 1881.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.G., G.M.S.I., G.M.I.E., *presiding*.
His Honour the Lieutenant-Governor of the Panjáb, K.C.S.I., C.I.E.
His Excellency the Commander-in-Chief, Bart., G.C.B., C.I.E.
The Hon'ble Whitley Stokes, C.S.I., C.I.E.
The Hon'ble Rivers Thompson, C.S.I., C.I.E.
The Hon'ble J. Gibbs, C.S.I., C.I.E.
Major the Hon'ble E. Baring, R.A., C.S.I., C.I.E.
Major-General the Hon'ble T. F. Wilson, C.B., C.I.E.
The Hon'ble C. Grant, C.S.I.

SINDH INCUMBERED ESTATES BILL.

The Hon'ble MR. GIBBS moved that the Report of the Select Committee on the Bill to amend the Sindh Incumbered Estates Act, 1876, be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. GIBBS also moved that the Bill as amended be passed. He said that it would be in the recollection of the Council that this Bill was introduced at the request of the Bombay Government, who found that in the practical working of the Sindh Incumbered Estates Act some difficulties had arisen, more especially with regard to the way in which the loans advanced by the Government to enable debts to be paid should be repaid; and there was also another point put forward, namely, that owing to certain circumstances, partly from ignorance and partly from other causes, some of the jágírdárs had not come forward within the time originally provided for in the first Act, and it was therefore necessary that an extension of six months should be given. Those were the two principal points on which the Bombay Government had asked us to pass an amending Act. The legislation

was agreed to by His Excellency the President, and a short Bill was prepared and referred to a Select Committee, and sent down to Bombay. The Select Committee had considered the reports received from the Bombay Government and the officers who had the working of the Act, and had come to the conclusion that it was not advisable to adopt the proposal of the Bombay Government, namely, that the Act should distinctly lay down that such loans should be a first charge against the monies collected from the estate, but that it was better to leave the matter in the hands of the local Government to make the arrangement in whatever way they liked. The Committee thought there might be cases in which it would be just and equitable that the repayment of the loan should be the first charge upon the estate, but in others it might not be so, and therefore that it would be better to leave it to the discretion of the local Government. With regard to the extension of the six months clause, there was no doubt about that. The Select Committee further thought that, in order to make the matter more clear and prevent any possible error in applying the modifications in the Bill as drafted to the original Act, it was better to repeal the original Act *in toto*, with the exception of the last three clauses which related to another matter, and re-enact the measure with the modifications agreed to by the Select Committee. That has been done, and the new Bill, including the old Act with the amendments, had been circulated to the Council. It had not been considered necessary to republish the Bill in the amended form or to send it down to the local Governments. It was simply a matter of drafting and made no difference in the provisions which had been decided upon as necessary to make the Act more workable. The Council would find that the alterations which had been agreed to by the Select Committee were, first of all, in section 4, in which, as it now stood, at any time within six months after the passing of this Act, any jágírdár who had not yet come in and taken advantage of the measure might do so. The next alteration was in the eighth section as it would be found in the amended copy of the Bill circulated to the Council this morning. In the previous draft, in the third line, the following words occurred: "and to the amount of any loan which may be received by the manager from Government." Instead of these the amended clause of this section would run thus: "and to the amount of any loan which may be received by the manager."

The next clauses in which there was any alteration occurred in sections 11, 17 and 18, which applied to the liquidation of the Government loan. Those were now drafted in a way which left it to the local Governments, and also to the Commissioner in Sindh, who was the immediate superior of the manager, to arrange for the repayment of the Government loan, making it either a first charge or a subsequent charge as they thought fit. There was also a slight change with regard to the manner of fixing the rate of interest, and it would be left to the option of the local Government as to what rate should be

charged. Then there was an amendment in section 24 of the Bill, to which the following clause (*c*) had been added :—

"(*c*) by borrowing money from Government at such rate of interest as appears reasonable to the local Government."

This was a new clause to make the matter more clear. In section 26 provision was made to keep the management in the hands of the manager until the debt to Government had been repaid; that was not provided for in the original Act, and the consequence was that the only means of securing the repayment of the loan was by taking a mortgage of each estate. That was an extremely cumbersome arrangement, and therefore it was thought better to provide that the management should continue till the debt had been paid. This would form the security to Government for the advances they made. Thus, in order to arrange for the repayment of the loan and to give the Government fuller powers to make the arrangement already explained, the alteration was made by the addition of clause (*c*), to section 31. These were the alterations made to carry out the required modifications to make the working of the Bill more simple. In conclusion he (MR. GIBBS) might state that no opposition had been made to the Bill, which had been published in the local Gazette, and that no communication had been received from any of the public in the matter.

The Motion was put and agreed to.

BROACH AND KAIRA INCUMBERED ESTATES BILL.

The Hon'ble MR. GIBBS moved that the Report of the Select Committee on the Bill to amend the Broach and Kaira Incumbered Estates Act, 1877, be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. GIBBS then moved that the Bill as amended be passed. He said that the observations which he had made with regard to the Sindh Bill applied equally to the Broach and Kaira Incumbered Estates Act. The alterations in both were of a similar nature. The Bombay Government, on reference from this Government, had reported that it was necessary also in this Bill to provide for an additional six months' term for people to come in.

The Motion was put and agreed to.

INLAND EMIGRATION BILL.

The Hon'ble MR. RIVERS THOMPSON introduced the Bill to amend the law relating to Emigration to the Labour-districts of Bengal and Assam, and moved that it be referred to a Select Committee consisting of the Hon'ble Mr. Stokes,

Major the Hon'ble E. Baring, the Hon'ble Mr. Grant and the Mover. He said :—"The Bill which I now present is intended to repeal Act No. VII of 1873, an Act which was passed by the Bengal Legislature. Ordinarily it would have been left to the Bengal Council to deal with this amending or repealing Bill, but there are two reasons which have led us to undertake the legislation here. The first is that since 1873 Assam has been separated from the Bengal Administration, and become a separate province directly under the Government of India; and, secondly, there are provisions in the Bill which affect the North-Western Provinces; and under these circumstances it was necessary that legislation should be undertaken in this Council. As I have before stated, our labours in legislating upon this subject have, in a very material degree, been assisted by the fact that the whole subject has been thoroughly investigated by an able and experienced Committee in Calcutta; and perhaps I have not sufficiently expressed the obligation which the Government owes to the members of that Committee, and especially to that element in it which represented the non-official and mercantile community who have not only devoted to the consideration of the subject much valuable time, but have brought to bear upon its discussion a great deal of practical experience and information.

"In the Statement of Objects and Reasons which accompanies the Bill will be found a full exposition of the leading features of the present measure; which, it will be seen from the marginal notes attached to the Bill, runs generally upon the lines of the law now in force and the recommendations made by the Calcutta Committee. If the Bill which I have the honour to present differs to some degree in the arrangement of its chapters, and in its form, I think I may say that there are only a very few material points of difference in substance, and I shall probably satisfy the requirements of the present occasion if I call the attention of the Council to those points.

"The subject divides itself naturally into three principal divisions: first, those which are covered by Chapters III and IV, relating to the system of recruitment; Chapter V, which refers to the transport by river of emigrants to the labour-districts of Assam; and Chapter VI, which is connected with the whole question of the protection of the labourer when he has reached the tea-estate. The principal changes which have been made in the Bill are as regards the system of recruitment, which it will be noticed is subdivided into two branches—one referring to recruitment by contractors and sub-contractors, and the second to the practice of recruiting by garden-sardárs and local agents.

"The system of recruitment through contractors is the one which has generally obtained since the first introduction of a regulated emigration to the province of Assam. It was favoured by Government as securing a more direct

supervision in the interest of the emigrant; and it was more convenient to the planter at a time when the means of communication in India were not so easy and rapid as in the present day. The local supply of labour in Assam has always been inadequate for its ordinary wants; and when the large tea-industry became established, the importation of foreign labour became a necessity. Accordingly, when a company engaged in tea plantation required labourers, the procedure adopted was to indent on contractors, who had established depôts in Calcutta, to send up as many coolies as employers wanted. These contractors engaged emissaries or recruiters to go into the distant mufassal districts where labour was available, and to collect the required number of men. Obviously, the delays in such a system were great, and they were increased by the necessity of bringing the men down to Calcutta, housing them in depôts, and subjecting them to all sorts of official and medical inspection before they could be forwarded to their destination. Apart from the great inconveniences arising from the delay, the expense involved in these arrangements was considerable; and, accordingly, when the law of 1873 was under discussion in the Bengal Council, a new principle was introduced to enable planters to make their own arrangements for the supply of coolie labour; and so what is now well known as the garden-sardárí system of recruiting formed part of the measure which became the Labour Districts Emigration Act of 1873. There can be little doubt that this system of recruiting is much more in favour with the planters than the old one of working through contractors established in Calcutta; and one of the main objects of the Bill now under notice is to place it on a wider or freer basis. I may be allowed to explain that the garden-sardárs are always labourers who have been employed for some time in the tea-gardens of Assam and have thus gained a good deal of experience of the kind of work which the tea-plantations require. They have come to know the advantages of obtaining regular pay and a fairly good position in the Assam districts; and having established satisfactory relations with their employers, are deputed by them to proceed to their native villages and districts for the purpose of procuring there the kind of labour which is best suited for the work on tea-estates. But when I say that this practice was introduced in 1873 I have also to add that it was subjected, as was not unnatural on the first introduction of a novel experiment, to certain restrictions and limitations. The object of the present Bill is, as I have said, to withdraw to a large extent those restrictions, and I will briefly state the amendments which are proposed in this direction. Under the law as it now stands the garden-sardár is compelled to present himself at the Court of the Magistrate of the district where he proposes to engage labourers that he may get his certificate countersigned. The present Bill does away with this provision. Seeing that the garden-sardár before he starts on his mission receives from his employer the written authority and instructions under which he is to act, and these are certified before a Government officer in Assam, the

necessity for further restriction in the matter seems uncalled for. Then, the certificate of the garden-sardár under the present Act is limited to six months' duration; and as it has been represented that within six months the work which the garden-sardárs have to do can often not be got through with sufficient completeness, the Bill proposes to extend the time during which the certificate is to be in force to one year; and in order to enable the employer to secure the continuance of the engagement of trustworthy agents, it provides for the renewal of existing certificates without requiring the personal attendance of the agent.

"Then, again, and this is perhaps the most important point in the amendment proposed under the law as it now stands, the garden-sardár cannot take with him more than twenty coolies. He was limited to that number by the Act of 1873, because in the difficulties of communication with Assam at that period it was not considered safe to entrust to a single man in the position and class which a garden-sardár would occupy the responsibility of conveying a large number of recruits dependent solely on his resources to carry them over very long distances. It has been found, however, that this restriction operates with some severity upon employers, who have to advance a good deal of money in detaching these sardárs to such duties; and as now interprovincial communications are fairly well established and are improving every day, the limitation imposed by the present law may be safely and advantageously removed; and the Bill therefore proposes to leave the number unlimited. Speaking generally of the changes under this part of the Bill, in the Statement of Objects and Reasons it is said:—

"'Such restrictions, besides unnecessarily impeding the garden-sardár in his operations, bring him into dangerous connection with contractors and recruiters, who not unfrequently tempt him to make over to them, for a consideration, labourers recruited at his employer's expense. The Bill severs all connection between garden-sardárs' and contractors' depots; and, though providing, in the employer's interest, for the effective control of garden-sardárs when on recruiting duty, removes the restrictions above mentioned, and gives the widest scope to the working of the sardárí system.'

"I believe these proposals will be regarded with satisfaction by all large employers of labour in Assam.

"On one point, with reference to this system of recruiting, the Bill differs from the recommendations which the Calcutta Committee made. It is referred to in section 66 of the Bill, and in paragraph 9 of the Statement which is submitted with it. The Committee proposed in their draft that the garden-sardár, having proceeded to the district in which his work had to be done, should, after the recruitment was completed, be allowed to convey his recruiters away from their districts without any procedure of registering the coolies before competent authorities, or without any arrangement as to the explanation of the contracts

and engagements which the labourers are supposed to have voluntarily undertaken, and that he shall be enabled to bring them on their way to Assam, leaving their registration and the explanation of their contracts to be effected at any time between their departure from their own districts and their arrival in Assam. It appeared to the Government that this was giving a very large license, which might lead to very great abuses; and that for the sake of the class of people to be engaged as labourers, and who from their ignorance would be especially exposed to undue influences and misrepresentations, the only right course would be to insist that before the Native leaves his own district his registration shall be effected by the Magistrate or some other officer appointed by Government for the purpose, and that the nature of his engagements should be fully explained to him. In sections 66 and 69 of the Bill these provisions have been included.

"In so stating, I am quite ready to admit that the objections which the planters have referred to, and which they point to as a serious hindrance to their requirements, are not without force. I am aware that these recruiters in doing this work in distant districts are often put to a great deal of inconvenience from the necessity of having to go through the formalities which the law requires. It is represented that the Magistrate of the district is frequently engaged in other important duties, and cannot attend to the recruiters; that he is often absent from his station on cold weather tours; and that the inconveniences which arise from having collected a large number of coolies at a place where they are delayed from day to day in order that their registration may be recorded, are difficulties which seriously enhance the trouble and expense which devolve upon the employer. I can only reply that these inconveniences attach to the entire system under which labour is recruited for emigration from our mufassal districts, and that the alternative of allowing complete freedom in the matter to the recruiters employed in this duty involves, in the opinion of the Government, much greater disadvantages. However, it is hoped if the Bill is accepted in its present form that arrangements may be made to simplify the present procedure, and this is a point to which the attention of the Select Committee will be directed, with a view to ascertaining whether the appointment of an officer at some central position in the tracts of country from which these labourers are drawn, and whose duty it would be to register and forward these coolies, might not be feasible. It seems to me quite possible that with the funds which are realised under the operation of this Bill, and which enable the payment of the salary of any officer appointed by the Government to carry out the purposes of the Bill, agencies might be established in suitable localities, which would not only relieve Magistrates from duties which are arduous and take up much time, but would facilitate the registration and despatch of coolies without any appreciable delay.

"There is one other point in connection with sardárí recruiting to which I would invite attention. The Bill provides that, instead of leaving the garden-sardárs to take any route they like from the recruiting districts to Assam, which obtains under the present Act, certain obligatory routes shall be prescribed by the local Governments so as to avoid the sickness and mortality which experience has shown to prevail in long journeys by road. Practically, coolies recruited for Assam come from Chutiá Nágpur, the Bihár Districts, and a few possibly from the North-Western Provinces and elsewhere. The railway lines already constructed would take most of these emigrants from within a very short distance of their own villages to a central point of departure at Hugli, from which they would be crossed to the Eastern Bengal Railway, and once on that line there would be no change till they reached Dhubri and Assam. Very little experience of such a plan, if properly carried out, would show its many advantages, while it would avoid one great evil, now too often necessary, of taking these men down to Calcutta and delaying them there for all these inspections and examinations which are obligatory under the present law before they can proceed.

"I must allude also to the effect of the changes made with regard to free emigration outside the scope of the Act. The first point on which the Committee laid stress was that the existing law did not afford sufficient encouragement to free emigration. Under the previous system, which was only partly modified by the Bengal Act of 1873, there were provisions which made it penal to engage coolies or to convey them to the labour district except in accordance with the proceedings laid down by that Act; and that Act provided that everything in the way of a contract to labour should be done outside of Assam, and thus labour-contracts entered into in the Assam districts had to be made under the ordinary law. The practical result of this condition of things was that, even if a native of India proceeded to Assam on his own account in search of employment, he could make no contract there beyond one year, and this could only be enforced under the ordinary civil law of the country. This restriction has now been withdrawn. The fourth and sixth paragraphs of the Statement of Objects and Reasons explain fully the circumstances under which this has been done.

"Another point which was represented as affecting the present law relates to the remedies provided for employers in the event of unlawful absence of the labourer from his work; and to meet this difficulty, which, like many others in this connection, arises from the great distances in Assam between the tea-plantations and the Magistrates' Courts, it is now provided that, instead of the obligation of a personal complaint to the Magistrate in each case, the employer shall make a monthly list of defaulting or absconding coolies, and that the

Inspector, during his periodical visits to the estate, should enquire into each case recorded in such list, and if satisfied of the truth of the charge, shall dispose of it as laid down in section 168 of the Bill.

"I must notice also the fact that the Bill differs from the conclusions of the Committee on the subject of procedure in cases of desertion. The opportunities for desertion are very great in Assam, and the practice is often encouraged by the great competition of labour in the province, under which labourers are, I am afraid, too often tempted by promise of bounties and rewards to forsake old employers and engage with new ones. The Committee proposed that if a labourer deserted, the employer should have the right of arresting him without warrant wherever he might be found. The Government of India was not prepared to concede this large power, and therefore the law will remain as it is now. Under this the arrest without warrant is only permissible in cases where the absconding coolie is found more than ten miles away from a Magistrate's residence. If within ten miles of the Magistrate's residence, the employer would be obliged to take the man before the Magistrate."

His Excellency THE PRESIDENT :—"That is to say, he will be obliged to go before the Magistrate to apply for a warrant, not to take the labourer, who would be arrested afterwards ?"

The Hon'ble MR. THOMPSON :—"Yes; section 170 of the Bill runs as follows :—

"'If any labourer deserts from his employer's service, such employer, or any other person acting on his behalf, may, without a warrant, and without the assistance of any police-officer, arrest such labourer wherever he may be found : Provided that, if such labourer be found within ten miles of the place where a Magistrate resides or in the service of another employer, he shall not be arrested without warrant.'

"As a general result, it will be seen that if the Bill is passed at all on the lines which are now proposed, it will remove many of the restrictions which at present retard free emigration. It will greatly develop the system of sardárí recruiting, from which the planters expect large benefits; and it will eventually promote, we may hope, the settlement of a permanently resident population in a province which has wide areas of waste land to reclaim. I may even go further and say that we can look forward to a time when, with the completion of the several projects before us for extending direct communication with Assam, even the necessity for such a law as this will not exist; when we may trust that the advantages secured to the people of our over-populated districts in Bengal of finding an easy livelihood in a part of the country where climate and soil are alike favourable will induce many to seek a home in the districts of our north-eastern frontier without any need for the interposition of Government."

Major the Hon'ble E. BARING said:—"My Lord, I do not propose to trouble the Council with any remarks upon the details of the important measure which has been introduced by my hon'ble colleague; those details will, no doubt, be carefully considered in Committee. The general scope of the measure has my hearty approval.

"A great deal has lately been done to develop the tea-industry in Assam. In the first place, the Tea Association with a very slight amount of help from the Government have adopted measures with a view to opening out the Australian and American trade. Those measures, we have recently heard, have met with a very fair amount of success. In the second place, the present measure will, I trust, minimise the difficulties under which the tea-planters have heretofore laboured and are still labouring in respect to emigration. Thirdly, there is the question to which my hon'ble colleague alluded incidentally, namely, the extension of river and railway communication with Assam. On this subject I propose to offer a few remarks to the Council.

"The subject, I may say, is not really as yet ripe for full discussion in all its details. I am therefore unable to be as explicit as I should wish. At the same time, it may be interesting to those concerned in the tea-industry to know at all events how the matter stands in so far as any communication can now be made.

"First, there is the question of river communication. On this point all I can at present say is that we are in communication with Mr. Elliott, the Chief Commissioner of Assam, with a view to deciding what action Government may most usefully and legitimately take in order to ensure the establishment of rapid steam communication to convey passengers, mails and light goods up the Brahmaputra.

"The question presents considerable difficulties both in respect to its details and to the principles involved. I trust, however, that it will be found that those difficulties are not insuperable.

"The next question is that of railway communication. A certain amount of impatience has been shown at the somewhat slow development of the policy of constructing railways through the agency of private enterprise in India. That impatience is very natural, and I fully share it. It must, however, be remembered that the difficulties which stand in the way of speedy action are considerable. There are, no doubt, some financial difficulties, but for the moment those are not the difficulties which most arrest our progress. Before the financial aspects of any particular case can be usefully approached, it is necessary to decide on the alignment of the railways. Surveys have to be made. Estimates have to be prepared.

"The position of the question as regards the line from Gauhati to Maimansingh is that we have no full reports from the engineer officers which will enable us to decide what alignment the line may most usefully take. Orders have, however, been issued for the country to be examined during the ensuing autumn and winter; and when that has been done, we shall be in a better position to consider the financial aspects of the question.

"As regards the agency to whom the construction of these lines should be entrusted, the correspondence already published in connection with the Jessore and Kulna Railway will have informed the Council and the public that the Central Bengal Railway Company has the option of making the line from Dacca to Maimansingh. It would be obviously undesirable that one company should make the line from Dacca and Maimansingh and that another should continue it to Gauhati. It is to be hoped, therefore, that the Central Bengal Company will make the whole of the line. On this point, however, I can at present say nothing definite. But I may observe that the hands of the Government are completely free. If we cannot come to terms with the Central Bengal Company, we are at perfect liberty to negotiate with others. The terms to be granted need not necessarily be the same as those accorded in the case of the Kulna and Jessore line. As some misapprehension appears to exist as to the precise terms granted to the Central Bengal Railway Company, I should like, with your Excellency's permission, briefly to explain what the nature of those terms are. I will compare them with those granted to the old guaranteed companies.

"In the first place, both in the case of the old guaranteed company and in the case of the Central Bengal Railway, the land is given free. On that point, therefore, the two systems stand on the same footing. But that is the only point on which they touch.

"In the second place, as regards the amount of capital on which the Government guarantees interest, an important distinction has been made. Under the old guarantee system the company had, under certain conditions, power to add to their capital, and any guarantee given by the Government extended, not only to the original capital that was raised, but also to the capital added. It is well known to those who have watched the history of guaranteed railways that there is a tendency always to add to the capital, at the expense sometimes of the revenue, account. In the new contract with the Central Bengal Railway Company the capital account is limited to one and a quarter million. Any sum added beyond that amount will be at the expense of the company and will not involve any Government guarantee,

"Thirdly, as regards the rate of interest, the terms accorded to the old guaranteed companies were 5 per cent. during the whole currency of the contract. The terms accorded to the Central Bengal Railway Company are 4 per cent. until the line is completed, and the maximum period allowed for the completion of the line is 5 years. Moreover, as it has been stipulated that any money advanced on account of interest during the period of construction will be repaid to Government with simple interest thereon out of the half profits over 5 per cent. interest, I cannot doubt that the whole of the advance will eventually revert to the treasury.

"Fourthly, as regards the purchase clauses. Under the old guarantee system the Government had the option of purchase after a certain period at a price which was generally calculated on the basis of the average price of the stock for the three years prior to the termination of the contract. Under the new contract with the Central Bengal Railway, on the other hand, the Government has the right of purchasing after 30 years at £125 per £100 of nominal capital. This provision is certainly favourable to the taxpayers; for I can hardly doubt that if the shares were left to find their ordinary level in the market, their price would be in excess of £125 thirty years hence.

"Well, my Lord, that is briefly a comparison of the old guaranteed terms and the new terms conceded to the Central Bengal Railway Company.

"I do not say that those terms are all that we could wish. I should have been glad if we could have adhered to the original proposal that there should be no guarantee at all; but I think that in considering this subject we must remember the French proverb '*Le mieux est toujours l'ennemi du bien.*'

"We have made a very great advance on the old guarantee system, and, moreover, we have gained the main object we had in view.

"That object was to direct public attention to the subject, and generally to give a stimulus to the construction of railways through the agency of private enterprise in India. I think any one can see that a very considerable change of opinion has recently taken place on this subject. When I commenced the negotiations connected with the Jessore line a year ago in London, I consulted many gentlemen, official and non-official, as to the possibility of constructing railways in India through the agency of private enterprise. After my arrival in Calcutta I consulted many other gentlemen, both European and Native, with a view to ascertaining whether it would be possible to launch a railway company in London or Calcutta on terms which would be not very onerous to the State. The answers I received were always friendly, but I cannot say that they were very encouraging. I could not, however, help

thinking that if we once succeeded in launching a company in London under the auspices of a firm of such standing as Messrs. Rothschild, the main object we had in view would be gained and that others would come forward. These anticipations have been justified, and I must say that I think our thanks are due to Sir Nathaniel Rothschild and his partners for the way in which they took up this matter; for it is within my knowledge that one of the motives which in no slight degree influenced them was a public-spirited desire to act as the pioneers to railway construction by private enterprise in India.

"Whether, however, the line from Dacca to Maimansingh and Gauhati is eventually entrusted to the Central Bengal Railway Company or to others, we shall endeavour to arrange that local capital shall have every opportunity afforded to it to come forward. I alluded in my financial statement to this great desirability of attracting local capital; and had I thought that there could have been any misapprehension as to the policy of the Government, I would have dealt with the subject more fully. The advantages of attracting local capital are in fact obvious. Mr. Gladstone, in one of his eloquent financial statements, once remarked that he considered direct and indirect taxation as twin sisters, and that he reserved to himself the right of paying his addresses to either or to both. That metaphor, I think, accurately represents the attitude of the Government of India towards English, or I should rather say European, and local capital. We prefer, if possible, to get local capital; but if local capital asks for too heavy terms, and is not available in sufficient quantity, we must turn our attention elsewhere. It may, indeed, be said in respect to the Kulna and Jessore line that local capital never had a chance of subscribing. That is a perfectly fair criticism. I may perhaps mention that a suggestion was made by the Government in the course of the negotiations that local subscription lists should be opened. No objection was offered to the principle, but it was thought that the thing was too small to split up, and that, to start the policy, there could be no objection to the adoption of the procedure which was actually adopted. However, inasmuch as no opportunity was as a matter of fact afforded to local capital to subscribe, I think the criticisms which have been made on that point are quite fair. It does not, however, at all follow that, because we adopted a certain procedure in one case, we should adopt the same procedure in all future cases. What we shall endeavour to do in the event of any further extension of Central Bengal Railway Company's operations, or of any other company being started, is to stipulate that local subscription lists shall be opened simultaneously with those in London. Thus, local capital will have every opportunity of subscribing. I cannot hope that local capital will be found in sufficiently large amounts to meet the wants of the country, but I hope and believe that it may be possible to combine European and local capital in any future undertakings.

"I am aware that I have somewhat digressed from the immediate subject before the Council. I have, however, gladly availed myself of the permission of your Excellency to do so, as I think the subject of which I have treated is of some interest to the public. We have recently had the advantage of learning the views of the Calcutta Chamber of Commerce and the public press on this subject; and I think I may say that the views of the Government, in so far as all essential points of policy are concerned, in no way differ from those expressed by the influential members of the trading and commercial community and the local press."

The Motion was put and agreed to.

The Hon'ble MR. RIVERS THOMPSON also moved that the Bill be published in the *Calcutta Gazette*, the *North-Western Provinces and Oudh Government Gazette* and the *Assam Gazette* in English and in such other languages as the local Governments might think fit. He explained that it was very desirable that the Bill should be passed in the course of next month; and that, with this view, the local Governments would be requested to submit their opinions upon it as quickly as possible.

The Motion was put and agreed to.

INDIAN COMPANIES BILL.

The Hon'ble MR. STOKES introduced the Bill for the incorporation, regulation and winding-up of Trading Companies and other Associations, and moved that it be referred to a Select Committee consisting of the Hon'ble Mr. Gibbs, Major the Hon'ble E. Baring and the Mover. He said that when, at the instance of the Financial Department, he obtained leave to introduce this Bill, he had described the substantial amendments of the present law which it was intended to effect. He would not now take up the time of the Council by repeating what he then said; but he would state that the amendments in question would be found in sections 13 to 23 (as to reduction of capital), 24 and 25 (as to subdivision of shares), 26 (as to associations not formed for profit), 27 (as to calls upon shares), 29 (as to transfer of shares), 30 to 35, 47, 49 (as to share-warrants), 74 (as to the annual balance-sheet), 75 (as to meetings), 7, 76, 150 (as to the power to make the liability of directors unlimited), 88 (as to prospectuses and notices inviting persons to subscribe), 132 (as to disqualifying certain contributories to present petitions to wind-up companies), 203 (as to compromises between a company and its creditors), 218, 219 (as to the power of the High Court to refer a winding-up to a district Court and to transfer a winding-up from one district Court to another).

He would only add two remarks to those that he had made when moving for leave to introduce the Bill. First, as to section 26. That section enabled societies such, for instance, as the Calcutta Trades Association, formed for the purpose of promoting commerce, art, science, charity or any other useful object, and of applying its income in promoting that object, but not for the purpose of paying dividends to its members, to become incorporated under the Act. "Associations of this description are not," says Sir Henry Thring, "by the general law, partnerships, or subject to the evils of limited liability. It is a misapprehension, therefore, to object, as some writers have done, that this section confers undue privileges on charitable or quasi-charitable societies. It merely enables them to adopt the complete organization of a corporate company, instead of the difficult and complex condition of a body that is neither a corporation nor a partnership." The section did not, like the corresponding English clause, apply to religious societies, those bodies being, it was thought, sufficiently provided for by Act I of 1880.

Secondly, section 35 contained an addition to the stamp-law. Our present Stamp Act naturally made no provision for the novel instruments which the Bill called "share-warrants." It was therefore necessary to provide for a proper duty, and this, in accordance with the English Statute, was declared to be three times the amount of the *ad valorem* stamp-duty which would be chargeable on an instrument transferring the shares or stock specified in the warrant if the consideration were the nominal value of the shares or stock. If a company issued a share-warrant without being duly stamped, it must of course be liable to a penalty, which the Bill proposed to make Rs. 500.

In conclusion, he might observe that the Bill, if it became an Act, would be, so far as he knew, the most complete Code of Companies' law in existence, For not only did it embody many of the rulings of the English and Indian Courts: it consolidated, with the modification necessary for India, the four English Statutes of 1862, 1867, 1870 and 1877; and it also comprised provisions enabling companies to refer to arbitration matters in dispute between them, and provisions as to arbitration in the case of a dispute between liquidators and a dissentient member as to the price to be paid for the purchase of his interest. In the English Act of 1862 both these sets of provisions were only introduced by reference to the Railway Companies Arbitration Act, 1859, and the Companies Clauses Consolidation Act, 1845.

The Motion was put and agreed to.

The Hon'ble Mr. Stokes also moved that the Bill be published in the local official Gazettes in English and in such other languages as the local Governments might think fit. He said that he might take this opportunity of stating

that it was not the intention of the Government to proceed with this Bill at Simla; it was brought forward here merely for the purpose of being published in the Gazettes and of eliciting criticism from competent persons. No further step would be taken with the Bill until the Government had returned to Calcutta.

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 21st September, 1881.

R. J. CROSTHWAITE,
Offg. Secretary to the Govt. of India,
Legislative Department.

SIMLA;
The 7th September, 1881.

Govt Central Branch Press, Simla.—No. 336 L. D.—16-9-81.—270.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House, Simla, on Wednesday, the 21st September, 1881.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.G., G.M.S.I., G.M.I.E., *presiding*.
His Honour the Lieutenant-Governor of the Panjáb, K.C.S.I., C.I.E.
His Excellency the Commander-in-Chief, Bart., G.C.B., C.I.E.
The Hon'ble Whitley Stokes, C.S.I., C.I.E.
The Hon'ble Rivers Thompson, C.S.I., C.I.E.
The Hon'ble J. Gibbs, C.S.I., C.I.E.
Major the Hon'ble E. Baring, R.A., C.S.I., C.I.E.
Major-General the Hon'ble T. F. Wilson, C.B., C.I.E.
The Hon'ble C. Grant, C.S.I.

STOWAWAYS BILL.

The Hon'ble MR. STOKES moved for leave to introduce a Bill to prohibit the landing of certain Stowaways, and to provide for the recovery of expenses incurred by Government in respect of such persons. He said that stowaways (*sit venia verbo*) were, on a rough average, found on board two out of every ten vessels arriving at the port of Calcutta. At Rangoon the average number landed annually was only twelve; but the Chief Commissioner said that there was every likelihood of this number increasing with the advance of the direct trade between the United Kingdom and Rangoon. They were frequently landed at Aden, but he (MR. STOKES) could not give the Council the figure; and at Bombay the Customs Preventive Department reported that they were numerous enough to render prohibitory measures desirable. For some unknown reason, stowaways did not approve of Madras, and cases of landing them in that Presidency were of rare occurrence. As the law stood, masters of ships in British Indian ports might land stowaways, and were in no way responsible for them after they had landed. If stowaways so landed were Europeans and became vagrants (as they occasionally did), they had to be dealt with under the European Vagrancy Act, 1874, and provided with subsistence-allowance while in charge of the police, with food while in a work-

house, and (where no employment was obtained for them) with a passage to some place out of British India—to England, or Australia, or wherever else their homes might be. As the necessity for relieving such persons really arose from the carelessness of masters of ships, who failed to detect their presence on board before leaving port, it seemed unfair that the expenses so incurred should be borne by the Indian tax-payer. A similar difficulty had occurred elsewhere. Thus, at home it had been held that stowaways were not seamen within the meaning of the Merchant Shipping Act, 1854, and therefore, when landed in the United Kingdom, they became a charge on parochial funds. In Mauritius, and, he believed, also in Victoria, the colonial legislatures had been forced to deal with the subject.

The present Bill had been prepared to relieve the Indian tax-payer. It prohibited the landing in British Indian ports of stowaways of European extraction, except with the previous sanction of the shipping master or some other officer appointed by the local Government; and it required the owner or agent of the ship on board of which the stowaway was found to give a bond to the effect that all expenses incurred in the event of the stowaway becoming a vagrant within one year should be borne by the obligor. It also imposed a penalty on any master causing or permitting a stowaway to land; and it provided that where any stowaway was caused or permitted to land without the shipping master's sanction and became a vagrant within one year of so landing, the owner or agent of the ship from which the stowaway had landed should pay all the expenses incurred by the State in consequence of his becoming a vagrant.

The present piece of "over-legislation" had been originated by the Financial Department; and all the maritime local Governments, except, of course, Madras, were in favour of it.

The Motion was put and agreed to.

BENGAL CIVIL COURTS BILL.

The Hon'ble Mr. Stokes moved for leave to introduce a Bill to amend the law relating to the Civil Courts in Bengal, the North-Western Provinces and Assam. He said that section 4 of the Bengal Civil Courts Act, 1871, declared that the number of Subordinate Judges and Munsifs to be appointed in each district should be fixed, and might from time to time be altered, by the local Government. And section 6 of the same Act declared that, when the Governor General in Council had sanctioned an increase in the number of Munsifs, the High Court should nominate such person as it thought fit to be a Munsif, and the local Government should appoint him accordingly. The num-

ber of Munsifs was accordingly fixed, under section 4, in the Lower Provinces and Assam. Subsequently, in exercise of the power vested in local Governments by the terms of the provincial service arrangements in regard to the creation of additional appointments on salaries not exceeding Rs. 250 a month, the Government of Bengal and the Chief Commissioner of Assam, without the previous sanction of the Governor General in Council, appointed Munsifs in excess of the number so fixed. Doubts had been raised as to the validity of such appointments. It appeared to the Government of India that the law did not authorize the local Government to appoint Munsifs, whether temporarily or permanently, in excess of the fixed number, unless an increase to that number had previously been sanctioned by the Governor General in Council. It was, however, in the opinion of the Government of India, desirable to empower the local Government, without the sanction, but subject to the control, of the Governor General in Council, to increase the number of Munsifs, provided that this power was confined to those grades of Munsifs the pay of which did not exceed Rs. 250 a month.

The present Bill had accordingly been prepared. The opportunity had been taken to validate the appointments of Munsifs already made by the Bengal Government and the Chief Commissioner of Assam, and to make it clear that the local Government could not increase the number of District Judges or Subordinate Judges without the previous sanction of the Governor General in Council. The law regarding the Bengal Civil Courts was contained in two Acts, VI of 1871 and XIX of 1877, section 1, and the Bill would repeal these enactments and re-enact them with the amendments which he had specified and with such changes in the wording of the law as the experience of the last ten years had shewn to be desirable.

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 5th October, 1881.

R. J. CROSTHWAITE,

Offg. Secretary to the Govt. of India,

Legislative Department.

SIMLA;

The 21st September, 1881.

Govt. Central Branch Press, Simla.—No. 380 L. D.—26-9-81.—270.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House, Simla, on Wednesday, the 5th October, 1881.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.G., G.M.S.I., G.M.I.E., *presiding*.

His Excellency the Commander-in-Chief, Bart., G.C.B., C.I.E.

The Hon'ble Whitley Stokes, C.S.I., C.I.E.

The Hon'ble Rivers Thompson, C.S.I., C.I.E.

The Hon'ble J. Gibbs, C.S.I., C.I.E.

Major the Hon'ble E. Baring, R.A., C.S.I., C.I.E.

Major-General the Hon'ble T. F. Wilson, C.B., C.I.E.

The Hon'ble C. Grant, C.S.I.

STOWAWAYS BILL.

The Hon'ble MR. STOKES introduced the Bill to prohibit the landing of certain stowaways, and to provide for the recovery of expenses incurred by Government in respect of such persons, and moved that it be referred to a Select Committee consisting of the Hon'ble Mr. Gibbs, Major the Hon'ble E. Baring and the Mover. He said that when he obtained leave to introduce the Bill he stated that in Mauritius, and, he believed, also in the colony of Victoria, the colonial legislatures had been compelled to legislate on the subject of stowaways. Since then he had ascertained that the colony of Victoria actually had legislated in that direction. Under their Passengers, &c., Statute of 1865, stowaways were treated as passengers, and in the event of their being likely to become distressed, the owner, master or charterer of the vessel was required, under that Act, to enter into a bond to prevent their becoming a burden upon the public charitable institutions of the colony. In Mauritius the practice was governed by Article 6 of Ordinance 11 of 1877, which forbade the landing of any stowaway without permission of the police under a penalty; and as permission was only given under certain special circumstances, the practical effect of the law was to compel the master of the vessel to bear the expense of taking or sending a stowaway back whence he came. The present Bill substantially enacted those provisions.

The Motion was put and agreed to.

The Hon'ble MR. STOKES also moved that the Bill be published in the *Fort St. George Gazette*, the *Bombay Government Gazette*, the *Calcutta Gazette* and the *British Burma Gazette* in English. It was not, he said, thought necessary that the Bill should be published in the Native languages.

The Motion was put and agreed to.

BENGAL CIVIL COURTS BILL.

The Hon'ble MR. STOKES introduced the Bill to amend the law relating to the Civil Courts in Bengal, the North-Western Provinces and Assam, and moved that it be referred to a Select Committee consisting of the Hon'ble Messrs. Rivers Thompson and Gibbs and the Mover. He had only to add to what he had said when he obtained leave to bring in the Bill that the object of introducing it at Simla was that it might at once be published in the Gazettes, and referred to the Local Governments and High Courts concerned. It would not be further proceeded with till the Council had re-assembled in Calcutta.

The Motion was put and agreed to.

The Hon'ble MR. STOKES also moved that the Bill be published in the *Calcutta Gazette*, the *North-Western Provinces and Oudh Government Gazette* and the *Assam Gazette* in English and in such other languages as the Local Governments might think fit.

The Motion was put and agreed to.

EXCISE BILL.

The Hon'ble MR. STOKES presented the Report of the Select Commitee on the Bill to consolidate and amend the law relating to the Excise-revenue in Northern India, British Burma and Coorg.

The Council adjourned to Wednesday, the 26th October, 1881.

R. J. CROSTHWAITE,

Offg. Secretary to the Govt. of India,

Legislative Department.

SIMLA;
The 5th October, 1881.

Govt. Central Branch Press, Simla.—No. 406 L. D.—8-10-81.—270.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House, Simla, on Wednesday, the 26th October, 1881.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.G., G.M.S.I., G.M.I.E., *presiding*.

The Hon'ble Whitley Stokes, C.S.I., C.I.E.

The Hon'ble Rivers Thompson, C.S.I., C.I.E.

The Hon'ble J. Gibbs, C.S.I., C.I.E.

Major the Hon'ble E. Baring, R.A., C.S.I., C.I.E.

Major-General the Hon'ble T. F. Wilson, C.B., C.I.E.

The Hon'ble C. Grant, C.S.I.

EXCISE BILL.

The Hon'ble MR. STOKES moved that the Report of the Select Committee on the Bill to consolidate and amend the law relating to the Excise-revenue in Northern India, British Burma and Coorg be taken into consideration. He said that the amendments made by the Select Committee had been specified with great care in the Report of the Select Committee, which had been drawn up by Mr. Crosthwaite, and he need only now mention to the Council two or three of the more important changes. We had reduced from six months to four months the term of imprisonment provided in section 35 for illegally manufacturing spirit or liquor, in section 36 for illegally introducing country spirit, and illegally removing or illegally importing spirit, in section 39 for illicit sale of spirit, in section 43 for conniving at illicit manufacture or sale of spirit. We had also reduced the penalty provided in section 41 for the illegal possession of spirit, liquor or drugs. The penalty provided in the corresponding section of the Bill as introduced was imprisonment for a term which might extend to six months, or fine which might extend to one thousand rupees, or both imprisonment and fine. We considered that this was unnecessarily severe, and had therefore reduced the maximum term of imprisonment to three months, and the fine to five hundred rupees.

On the other hand, we were of opinion that the punishment which could be imposed under section 45 on an Excise-officer who made a vexatious search or seizure was inadequate. We had therefore, for the penalty of five hundred

rupees' fine, substituted a penalty of imprisonment for a term which might extend to three months, or a fine which might extend to five hundred rupees, or of both imprisonment and fine.

At the suggestion of two of the Local Governments concerned, we had inserted in the Bill the provisions of section 81 of the present Act (X of 1871), which provide for the grant of licenses for the sale and manufacture of spirits in military cantonments.

In section 54 of the Bill we had given the Chief Revenue Authority the power of revising the orders of Collectors and Commissioners.

We had also added a section giving the Local Governments power to exempt any specified article or any class of persons from all or any of the provisions of the Act. It was thought by the Local Government of British Burma that this power would be useful in that province, where certain tribes had, for many years past, been allowed privileges such as that of brewing, without a license, their own rice-beer for private consumption, or, at certain seasons, of being permitted, without payment of duty, to distil spirit for a propitiatory offering to the Nats, malevolent demons who dwelt in trees, jungles and other damp places, and who consequently liked to be fortified with alcohol.

The Motion was put and agreed to.

The Hon'ble Mr. Stokes also moved that to clause (*a*), section 9, of the Bill the following words be added, namely,—

"and in particular as to the conditions on which any materials to be used in making spirit may be brought into such distillery."

Section 9 of the Bill provided that the Chief Revenue Authority might from time to time make rules as to the management of distilleries established under section 6. It had been thought by Mr. James, the Registrar of the High Court, Allahabad, who had greatly assisted the Select Committee in revising the Bill, that it did not provide with sufficient clearness for the power to impose conditions on the introduction into such distilleries of materials, such as the mahowa flower, to be used for the manufacture of spirit. With the addition now proposed the Chief Revenue Authority would be able to lay down rules as to the time for introducing such materials and the notices to be given to the Excise-officers as to such introduction.

The Motion was put and agreed to.

The Hon'ble Mr. Stokes then moved that the Bill as amended be passed.

The Motion was put and agreed to.

DEKKHAN AGRICULTURISTS' RELIEF BILL.

The Hon'ble MR. GIBBS presented the Report of the Select Committee on the Bill to amend the Dekkhan Agriculturists' Relief Act, 1879, and for other purposes, and moved that the Report be taken into consideration. He said that the Report had been prepared in communication with the Bombay Government. It was unnecessary that he should say anything as to the principle of the Act, which had been fully discussed when it became law some years ago. The result of the past experience in regard to it had been that, owing to what the Bombay Government considered faults in the original Act, the measure had never had a fair chance of being worked as it was intended to have been, and certain amendments had been from time to time proposed and finally accepted in the form in which the Legislative Department here had prepared the Bill, which he had the honour to introduce into the Council some time ago. The Bill had been sent to Bombay, and had been carefully considered by that Government and by the Special Judge, Dr. Pollen, who had charge of the measure in that Presidency, and they had proposed certain amendments and alterations in the Bill. Those alterations had been fully considered by the Select Committee, and the Bill had been altered in accordance with what was considered to be the wishes of the Bombay Government. The first alteration made was the insertion of a new definition of "agriculturist." The definition originally given was considered not to have worked well, or to have carried out what was the intention of the proposers of the Bill; it was also objected to by the Bombay Government. It had been suggested to leave that Government to decide as to who should be considered an agriculturist, but taking into consideration the difficulties this would give rise to, the Select Committee had introduced into the Bill a new definition of "agriculturist" and had added two explanations which would make that definition more clear. They had also added in one of the sections the words "not being merely a surety for the principal debtor," chiefly owing to a decision given by the High Court of Bombay in which the wording of the Act as originally framed was found to have had anything but a beneficial effect,—in fact, it enabled creditors to get beyond what was the intention of the law; and the present Chief Justice and Mr. Justice Birdwood had come to the conclusion that, when the Act was amended, provision should be made to remedy this. Other alterations had been made, to some of which he need hardly allude. There was one made at the suggestion of the Bombay Government, namely, to give the District Judge power to transfer applications pending before one conciliator to the file of another conciliator. The reason for this was that we found that those conciliators were gentlemen who had a great deal of labour thrust upon them without any pay, and who often in consequence found it necessary for their bodily or spiritual health to take a pilgrimage to Benares or elsewhere, leaving their work behind them.

As the Act stood, there was no power to transfer the cases to another, and this was now provided for. Another and an important alteration had been made at the request of Dr. Pollen, the Special Judge, and that was in the provision of the original Act which prohibited legal practitioners of any kind from appearing in suits before a Village Munsif or Subordinate Judge. We had considered that question very carefully, and had come to the conclusion that it would be advisable to allow pleaders to appear before the Subordinate Judge in cases that came before him. The vernacular press had been very considerably exercised upon the point, and it was thought that the consensus of opinion in the press, together with Dr. Pollen's, which was in favour of such a change, should be accepted, and a clause had accordingly been inserted.

The only other matter he need mention was one to which he had already referred at a previous meeting of the Council, about allowing police patels to act as conciliators. The Bombay Government were of opinion that this should be allowed. The police patel in the Bombay Presidency was not like the ordinary policeman in blue coat and metal buttons, but was very often the most respectable man in the village, in which he was perhaps the hereditary revenue and police patel, and often the most influential person there. The Bill did not oblige the appointment of these men as conciliators, but it enabled the Local Government to appoint them if they considered that they were the best men for the business. There were also other minor alterations and amendments which would enable the Bombay Government to carry out the Act to the fullest extent, and to which it was unnecessary for him to refer.

The Motion was put and agreed to.

The Hon'ble Mr. Gibbs also moved that the Bill as amended be passed.

The Motion was put and agreed to.

BANKI LAWS BILL.

The Hon'ble Mr. Stokes presented the Report of the Select Committee on the Bill to amend the law in force in the Mahál of Bánki, and moved that the Report be taken into consideration. He said that the Select Committee had made no addition beyond that of a clause repealing two or three words relating to the Mahál, which were contained in three Bengal Regulations, and would when the Bill was passed become obsolete; and the only change made in the Bill was that the Mahál in question would now be attached to the District of Katák instead of to that of Púrí. This was in accordance with the wishes of the inhabitants of the Mahál, and those wishes seemed reasonable, as Katák was the head-quarters of the Commissioner, the Magistrate and the Collector.

The Motion was put and agreed to.

The Hon'ble MR. STOKES also moved that the Bill as amended be passed.

The Motion was put and agreed to.

INLAND EMIGRATION BILL.

The Hon'ble MR. RIVERS THOMPSON asked for leave to postpone the consideration of the notices which stood in his name regarding the Bill to amend the law relating to Emigration to the Labour-districts of Bengal and Assam. He said that the Select Committee had hoped to have been able to show the introduction of several changes which it was thought would facilitate the working of the Bill; but within the last few days they had received a telegram from the Chief Commissioner of Assam, who pressed that further time should be given to him for the consideration of the measure, which was of great importance to the Province; and in view of this request, and also to enable the Chief Commissioner to consult the planters and officials in the Districts upon certain sections of the Bill, it had been thought proper not to ignore his application. It was hoped that by the time the Council reassembled in Calcutta the representations referred to would be received.

Leave was granted.

PANJAB LAWS ACT AMENDMENT BILL.

The Hon'ble MR. STOKES, in the absence of His Honour the Lieutenant-Governor of the Panjáb, presented the Report of the Select Committee on the Bill to amend the Panjáb Laws Act, 1872, and moved that the Report be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. STOKES also moved that the Bill as amended be passed. He said that the Select Committee had made no substantial change in the Bill. He himself should have liked to have gone somewhat further. The Bill was a mere piece of patchwork, and the Act which it patched (IV of 1872) had been already twice amended, namely, by Acts XV of 1875 and XII of 1878. He would, therefore, have preferred to repeal the principal and the amending Acts, and to re-enact them with the alteration now thought necessary, omitting the sections of the principal Act which purported to deal with insolvency, and which seemed to have been framed by some one altogether ignorant of what an insolvency-law should be. They made, for example, no provision as to the personal application of the jurisdiction which they conferred: they omitted to provide for vesting the debtor's property in the assignee; and they gave no appeal from orders passed in insolvency-proceedings. In view of the provisions in the

twentieth chapter of the Civil Procedure Code, as amended by Act XII of 1879, the sections in question seemed absolutely useless, and he believed that his opinion was shared by the ablest judicial officers in the Panjáb. The Local Government, however, with the proverbial affection of a mother for her most rickety offspring, was unwilling to abolish this imperfect law, and he (MR. STOKES) had now done all that was in his power, in bringing to notice some of its most serious defects.

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 7th December, 1881.

R. J. CROSTHWAITE,

Offg. Secretary to the Govt. of India,

Legislative Department.

SIMLA;
The 26th October, 1881.

Govt. Central Branch Press, Simla.—No. 460 L. D.—31-10-81.—280.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Wednesday, the 7th December, 1881.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.G., G.M.S.I., G.M.I.E., *presiding*.

His Excellency the Commander-in-Chief, G.C.B., C.I.E.

The Hon'ble Whitley Stokes, C.S.I., C.I.E.

The Hon'ble Rivers Thompson, C.S.I., C.I.E.

The Hon'ble J. Gibbs, C.S.I., C.I.E.

Major the Hon'ble E. Baring, R.A., C.S.I., C. I. E.

Major General the Hon'ble T. F. Wilson, C.B., C.I.E.

The Hon'ble H. J. Reynolds.

The Hon'ble Mahárájá Jotíndra Mohan Tagore, C.S.I.

The Hon'ble L. Forbes.

NEGOTIABLE INSTRUMENTS BILL.

The Hon'ble MR. STOKES moved that the fourth Report of the Select Committee on the Bill to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques be taken into consideration. He said that this Bill was a good instance of the tendency to hasty legislation of which the Government of India was so constantly accused by the veracious newspapers on behalf of which his hon'ble friend opposite (Mr. Gibbs) was going to address the Council. Drawn originally in 1866 by the late Indian Law Commission, and intended to be one of the chapters of the Indian Civil Code, it was introduced without alteration in December, 1867,—just fourteen years ago,—and referred to a Select Committee. The then mercantile members of this Council, while admitting the desirability of codifying the rules relating to negotiable instruments, objected to the Bill on account of its numerous deviations from English law, and they were supported in their objection by the criticisms which in the years 1868—1869 were sent in to the Legislative Department. Strong objection was also taken to the omission from the Bill of any saving of the customs of native merchants regarding hundís. To obviate these objections the Bill was, in 1877, recast in the Legislative Department, Mr. Phillips of the Calcutta Bar, then Legislative Secretary, doing the bulk of this laborious and difficult

piece of work with a skill and zeal of which MR. STOKES had already spoken in this Council. A preliminary report was presented by the Select Committee in October, 1877, and the revised Bill was published in the *Gazette of India* and circulated to all the Local Governments for opinion and publication in the local Gazettes. Further criticisms from the Local Governments, the High Courts and the Chambers of Commerce came in, and these, with the Bill, were submitted to a Select Committee comprising, amongst others, the Advocate General of Bengal, Mr. Evans of the Calcutta Bar, and Mr. E. C. Morgan, a leading Calcutta merchant. These gentlemen reported in favour of the Bill, but made certain alterations both in wording and substance. The Bill as amended by them was published in the Gazette for February, 1879. It was then by orders of the Secretary of State referred to a new Law Commission, composed of Sir Charles Turner, Mr. Justice West and himself. That Commission reported that they had found little or nothing to change in the Bill but thought that certain specified additions (some of which were suggested by Mr. Chalmers's able *Digest of the Law of Bills of Exchange*) might use fully be made to it. Of these the most important was in the second paragraph of section 1. That paragraph saved local usages relating to hundís and other instruments in an Oriental language. But, in order to facilitate the assimilation of the practice of native shroffs to that of European merchants, the Law Commissioners recommended the insertion of a proviso that such usages might be excluded by any words in the body of the instrument indicating an intention that the legal relations of the parties should be governed by the proposed Act. He believed that this proviso (which had, as well as he remembered, been suggested by the practice of the Bank of Bengal for many years) would have the most beneficial results in ultimately rendering the custom of shroffs as to hundís identical with that of European bankers as to negotiable papers. An eminent critic (Sir James Stephen) of the Bill said that he cannot see why uniformity of practice is desirable." The reason was that it prevented uncertainty and litigation as to what had been called the most cosmopolitan of all contracts, and that it facilitated dealings, not only between English and native merchants, but between native merchants in different parts of India. The practical working of a system of credit was made safer and more beneficial when the bills of exchange under which a banker or merchant was responsible were governed by precisely the same legal conditions as those on which he was a creditor, and in reference to which the others were issued or accepted.

The next stage in this long history was that the Bill as settled by the Law Commission was published in the *Gazette of India*, and that it was then, by order of the Secretary of State, communicated to the Select Committee, which

at that time consisted of Mr. Bazett Colvin of the Bengal Civil Service, Mr. Pitt Kennedy, Mr. Paul and himself.

A fourth report was then prepared. The Committee adopted most of the additions proposed by the new Law Commission, made some further unimportant changes, and recommended that the Bill as thus amended be passed. Their report was published last January with the Bill as revised for the fourth time, and the Bill was again circulated for opinion and publication, and was translated into the vernacular by all the Local Governments with the single exception of British Burma. Considering the many years that the Bill had now been before the Council, the copious and searching criticism it had received from all, or almost all, competent persons in India, the number of times it had undergone revision, and the absence of all objection on the part of the Local Governments, MR. STOKES had only to repeat what he said when presenting the fourth report last January—namely, that without the experience derived from its actual operation the Bill was not likely to be further improved. He trusted, therefore, that the Council would now follow the example of more than forty countries which had codified their rules on the subject, and allow this useful measure to become law; and he was authorised by his learned friend the Advocate General, who was unavoidably absent, to say that he fully concurred with him in thinking that the Bill might now take its place on the Indian Statute-book.

The Select Committee was well aware that the Bill did not deal exhaustively with the subject: no Bill could possibly do so. But it believed that the Bill, the Contract Act (to which it was a supplement), and the Evidence Act would, taken together, supply rules for the disposal of all the questions that ordinarily arose in British India as to the rights of parties to negotiable instruments.

MR. STOKES, in conclusion, expressed his deep sense of the obligations which the Government, and especially the Law Member, were under to the Additional Members who had successively served on the Select Committee on this Bill, and he wished also to acknowledge the valuable criticisms received officially and unofficially from his friends Sir Richard Garth, Sir Charles Turner, Mr. Wilkinson, the Recorder of Rangoon, and Mr. O'Sullivan, the Advocate General of Madras; from the Chambers of Commerce at Calcutta, Madras, Bombay, and Rangoon; from the Calcutta Trades Association; from Mr. Dickson, Mr. Scrymgeour, Mr. Franck, and other officers of Indian banks; from Mr. Rattigan of the Lahore Bar, and last, but by no means least, from those distinguished native lawyers Lakhsmí Náráyana Pandit of Lucknow and Nánábhái Haridás of Bombay.

The Motion was put and agreed to.

The Hon'ble MR. STOKES also moved that in section 1 for the word "January" the word "March" be substituted. The object of this amendment was to postpone the commencement of the Act for two months, so as to give more time to judges and lawyers to familiarise themselves with its provisions.

The Motion was put and agreed to.

The Hon'ble MR. STOKES also moved that in section 3, paragraph 2, line 1, for the word "officer" the word "person" be substituted. The object of this amendment, which had been suggested by the Local Government of the Panjáb, was to authorise the appointment as notaries public (for the purpose of noting and protesting bills and hundís) of persons not being officers of Government. Such officers would, it was feared, be in some places too much occupied with their proper duties to undertake the additional functions of notaries under the proposed Act.

The Motion was put and agreed to.

The Hon'ble MR. STOKES then moved that the Bill as amended be passed.

The Motion was put and agreed to.

INLAND EMIGRATION BILL.

The Hon'ble MR. RIVERS THOMPSON presented the Report of the Select Committee on the Bill to amend the law relating to Emigration to the Labour Districts of Bengal and Assam.

HINDÚ WILLS BILL.

The Hon'ble MR. STOKES introduced the Bill to declare the extent of the testamentary power of Hindús and Buddhists, and to regulate their Wills, and moved that it be referred to a Select Committee consisting of the Hon'ble Messrs. Gibbs and Evans, the Hon'ble Mahárájá Jotíndra Mohan Tagore and the Mover. He said that the Hindú Wills Act, 1870, had now been in force for eleven years in the Lower Provinces of Bengal, the Chief Commissionership of Assam and the towns of Madras and Bombay. It had worked satisfactorily in preventing forgery, fraud and perjury. There was also reason to believe that it had enhanced the value of property by making the title thereto more readily ascertainable and by facilitating its transfer. The primary object of the present Bill was to extend to the rest of British India such of the provisions of the Act as had not been repealed by the Probate and Administration Act, 1881.

The opportunity had been taken to declare, in accordance with recent decisions, that a Hindú's right to bequeathe was co-extensive with his power to alienate, except where in an undivided family the right to bequeathe conflicted with the law of survivorship. MR. STOKES had submitted the wording of this declaration to his friend Mr. J. D. Mayne, who was probably, next to Professor Bühler of Vienna, the highest living authority on what was called Hindú law, and Mr. Mayne had expressed his approval of the clause.

In British Burma, the learned Recorder of Rangoon and the Judicial Commissioner, sitting as Judges of the Special Court, had recently decided that a Buddhist had no power to make a will. But both Judges were strongly in favour of conferring the power by legislative enactment. The Local Government remarked that "the Burmese of the larger towns are in the habit of making wills. They are very ready to adopt the practices of advanced civilisation where they recognise their advantages, and they are quick to discover the merits of any particular custom. In the course of the rapid progress which their country is making, they have easily perceived the benefits of a power of regulating the devolution of property by will, and a genuine want for this power has in consequence grown up." The Bill, therefore, expressly declared that every Buddhist might bequeathe property in the cases and to the extent in and to which he might transfer the same.

As there possibly were in some parts of the empire Hindús and Buddhists to whom it might be inexpedient to apply the rules for the execution, attestation, revocation, revival and interpretation of wills, power had been given to each Local Government, with the previous sanction of the Governor General in Council, to exempt from all or any of those rules the members of any race, sect or tribe throughout the whole or any specified portion of the territories administered by such Government.

The Motion was put and agreed to.

SEDITIOUS PUBLICATIONS BILL.

The Hon'ble MR. GIBBS moved for leave to introduce a Bill to amend the law relating to Seditious Publications. He said:

"My Lord, I have the honour to move for leave to introduce a Bill to repeal Act IX of 1878 and its amending Act, XVI of 1878.

"It will be remembered that what is commonly known as the Vernacular Press Act was introduced and passed at a time when it was considered that some further restriction than the law then allowed should be placed on the

freedom which the writers in the vernacular press enjoyed, and which it was considered they had abused, and this, not because the provisions of the Indian Penal Code had been tried and been found wanting,—although legal opinions had been obtained throwing doubt on the provision of that Code being sufficient for the purpose,—but to give the Government the power, when necessary, of its own motion to stop seditious writing without having recourse to the ordinary tribunals of the country. The measure, I believe, was considered more in the light of a preventive than of a punitive nature.

"Whether so severe a measure as Act IX of 1878 was needed or not it is not now necessary for me to inquire, but since its passing into law it has never been fully put into operation against any vernacular publication in British India, and its exceptional nature has doubtless prevented it being made use of, it going much further than its alleged precedent, the Irish Press Act, did, and rendering necessary, at all events in the opinion of the present Government, the existence of a state of circumstances far more serious than happily has occurred for many years to justify its being placed in full operation. For these reasons the question of its repeal has been very carefully considered, with the result that a Bill for that purpose has been prepared, and for permission to introduce which is the object of my present motion.

"Act IX of 1878 dealt with two separate questions,—namely, seditious writings in—

(1) vernacular publications in British India, and

(2) vernacular publications printed elsewhere and imported into British India.

"With regard to the latter subject, the Act had been put into force on the occasion of an attempt to import into this country a very objectionable publication issued in Turkey. It is not intended that the power so given to the Government should be done away with, but it will be preserved in a different form, namely, by an executive order under section 19 of the Sea Customs Act of 1878 and a re-enactment, in the form of an addition to the Indian Post Office Act of 1866, of the 15th section of the Act now to be repealed. A combination of these will give Government full power to stop the import of any objectionable publications issued abroad and to punish attempts to infringe the law on the subject.

"Should any seditious communications in publications issued within British India be brought to the notice of Government, the law as

provided by the Indian Penal Code can, if necessary, be had recourse to, while, should a state of things unhappily arise at any time in this country which would compel Government to take exceptional measures beyond what the law of the Penal Code would permit, the present Government at all events would not shrink from taking such steps as might be deemed necessary and justifiable. But in a normal condition of affairs it is considered sufficient to leave the law as it stood before the passing of Act IX of 1878."

The Motion was put and agreed to.

POWERS-OF-ATTORNEY BILL.

The Hon'ble MR. STOKES introduced the Bill to amend the law relating to Powers-of-Attorney, and moved that it be referred to a Select Committee consisting of the Hon'ble Messrs. Gibbs, Reynolds and Evans, and the Mover He said that, as the law stood, the donee of a power-of-attorney, when executing an instrument pursuant to the power, must sign, and, where sealing was required, must seal, in his principal's name. The first object of this Bill was to render it legal for such donees to execute in and with their own names and seals. The law respecting the execution of instruments under powers-of-attorney would thus be made accordant with what would be the rule in England from and after the 31st December, 1881, and with what was believed to be the practice of the Natives in the North-Western Provinces, the Panjáb, British Burma, and, probably, elsewhere in India. The section effecting this was copied from section 46 of the recent Statute 44 & 45 Vic., c. 41, which took effect from the close of the present year.

The second object of the Bill was to preclude doubts as to the liability of a donee of a power-of-attorney who made payments in good faith after the donor of the power had died or become lunatic or bankrupt or insolvent, or had revoked the power, when the fact of death, lunacy, bankruptcy, insolvency or revocation was not known to the donee at the time of making the payment. The section effecting this was copied from section 47 of the Statute abovementioned, and merely extended to all attorneys the rule as to trustees, executors and administrators making payments under powers, which had been in force in British India for the last fifteen years—see Act XXVIII of 1866, section 39.

The third and last object of the Bill was to provide for the deposit of instruments creating powers-of-attorney, and for the evidence of the contents of such instruments. The section effecting this was copied (with the modifications necessary to adapt it to India) from 44 & 45 Vic., c. 41, section 48. It might also be worth while to declare (in accordance with section 40 of that Statute) that married women, whether minors or not, should have power to appoint

attorneys on their behalf for the purpose of executing a deed or doing any other act which they might themselves execute or do. The matter would be considered by the Select Committee to which he hoped the Bill would now be referred.

The Motion was put and agreed to.

PRISONERS' ACT AMENDMENT BILL.

The Hon'ble MR. STOKES also introduced the Bill to amend the Prisoners' Act, 1871, and moved that it be referred to a Select Committee consisting of the Hon'ble Messrs. Gibbs and Reynolds, and the Mover. He said that sections 319 and 320 of the present Code of Criminal Procedure had been omitted in the Bill for regulating the procedure of the Courts of Criminal Judicature, which repealed that Code and re-enacted the greater part of it.

The former section empowered the Governor General in Council to appoint a place or places in British India to which persons sentenced to transportation should be sent, and also authorized the Local Government to provide for the removal of such persons to the place or places so appointed. The latter section provided for the case of persons sentenced to transportation while already undergoing transportation under a sentence previously passed.

The reason for the omission of these provisions from the Criminal Procedure Bill was that the bulk of the matter with which they dealt did not belong to criminal procedure, but fell within the scope of the Prisoners' Act, 1871.

The present Bill had, therefore, been prepared. It simply substituted for section 33 of the Prisoners' Act, 1871, a section containing the provisions of sections 319 and 320 of the present Code of Criminal Procedure, and would come into force at the same time as the new Code. The part of the former section which declared that no sentence of transportation should specify the place to which the person sentenced was to be transported did, no doubt, belong to criminal procedure, and would therefore be added to section 368 of the new Code.

The Motion was put and agreed to.

BENGAL CIVIL COURTS BILL.

The Hon'ble MR. STOKES also moved that the Hon'ble Mr. Reynolds and the Hon'ble Mahárájá Jotíndra Mohan Tagore be added to the Select Committee on the Bill to amend the law relating to the Civil Courts in Bengal, the North-Western Provinces and Assam.

The Motion was put and agreed to.

SUNDRY BILLS.

The Hon'ble MR. STOKES also moved that the Bill to define and amend the law relating to the Transfer of Property, the Bill to define and amend the law relating to Private Trusts and Trustees, and the Bill to define and amend the law relating to Easements and Licenses be referred back to the respective Select Committees. He said his object in making this Motion was to ask the Select Committees on the Transfer of Property Bill and the Trusts Bill to consider the expediency of making in each of those Bills a few further amendments, most of which had been suggested by the admirable Property Act (44 & 45 Vic., c. 41) which had recently been passed by Parliament, and for which England was indebted to Lord Cairns, and to suggest to the Select Committee on the Easements Bill the desirability of providing, in accordance with a recent decision of the Judicial Committee of the Privy Council, *Turner* v. *Walsh*, 6 App. Ca. 636, a statutory rule under which easements could be acquired as against the Government.

The Motion was put and agreed to.

The Hon'ble MR. STOKES also moved that the Hon'ble Mr. Evans be added to the Select Committees on the following Bills:—

To define and amend the law relating to the Transfer of Property.

To define and amend the law relating to Private Trusts and Trustees.

To define and amend the law relating to Easements and Licenses.

To consolidate and amend the law relating to the Courts of Small Causes established in the Presidency towns.

For the incorporation, regulation and winding up of Trading Companies and other Associations.

The Motion was put and agreed to.

TRUSTS AND EASEMENTS BILLS.

The Hon'ble MR. STOKES asked leave to withdraw the Motion that the Hon'ble Mahárájá Jotíndra Mohan Tagore be added to the Select Committees on the Bills to define and amend the law relating to Private Trusts and Trustees, and to define and amend the law relating to Easements and Licenses. He asked this leave in accordance with the wish of the Hon'ble Mahárájá, who regretted that he had not time to serve on these Committees, as well as on those of which he was already a member.

Leave was granted.

CRIMINAL PROCEDURE BILL.

The Hon'ble MR. STOKES then moved that the Hon'ble Mr. Forbes be added to the Select Committee on the Bill to consolidate and amend the law relating to Criminal Procedure.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 15th December, 1881.

R. J. CROSTHWAITE,
Offg. Secy. to the Govt. of India,
Legislative Department.

CALCUTTA,
The 7th December, 1881.

Government of India Central Printing Office.—No. 100 L. D.—1-8-84.—70.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House, on Thursday, the 15th December, 1881.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.G., G.M.S.I., G.M.I.E., *presiding*.

His Honour the Lieutenant-Governor of Bengal, K.C.S.I.

His Excellency the Commander-in-Chief, G.C.B., C.I.E.

The Hon'ble Whitley Stokes, C.S.I., C.I.E.

The Hon'ble Rivers Thompson, C.S.I., C.I.E.

The Hon'ble J. Gibbs, C.S.I., C.I.E.

Major the Hon'ble E. Baring, R.A., C.S.I., C.I.E.

Major-General the Hon'ble T. F. Wilson, C.B., C.I.E.

The Hon'ble H. J. Reynolds.

The Hon'ble Mahárájá Jotíndra Mohan Tagore, C.S.I.

The Hon'ble L. Forbes.

The Hon'ble C. H. T. Crosthwaite.

The Hon'ble A. B. Inglis.

INLAND EMIGRATION BILL.

The Hon'ble RIVERS THOMPSON said that he understood that his hon'ble friend Mahárájâ Jotíndra Mohan Tagore had a statement to make regarding the Bill to amend the law relating to Emigration to the Labour-districts of Bengal and Assam, and he would, therefore, reserve any observations he might have to make until he had heard what the hon'ble Member had to say.

The Hon'ble MAHÁRÁJÁ JOTÍNDRA MOHAN TAGORE said he deemed it his duty to submit to the Council the fact that native opinion was strong in thinking that the present Bill was extremely one-sided, and that many of its provisions would operate with great harshness on the poor labouring classes of their countrymen. If this conviction gained ground and the idea of the extreme severity of the law got abroad among the masses, he was afraid it would be injurious to the tea-planters themselves, at whose instance he believed the present Bill was introduced; for the poor and ignorant classes of the people would fight shy of all connection with tea-gardens, under an exaggerated apprehension of mischief. and contractors and garden-sardárs would find it difficult to get recruits

unless they practised upon the people the grossest deception, which could not possibly be the object of the legislature to countenance even in the remotest manner. But such, he feared, would be the result if this Bill were passed into law in its present form. Some of the principal provisions of the Bill, which it was apprehended would operate harshly towards the labourer, had been noticed in the memorial of the British Indian Association, and he would take the liberty, with His Lordship's permission, to move that the Bill might be referred back to the Select Committee for a short time for reconsideration, with special reference to that memorial; for it was but fair that the other side should also have a fair hearing. He was aware that the Tea-planters Association had submitted a representation stating that their interests would suffer materially if the Bill was not passed into law by the end of this month, but he submitted that, if the Select Committee were to report in a week's time, he did not think there could be any objection to his suggestion being accepted.

The Hon'ble RIVERS THOMPSON said the memorial of the British Indian Association to which his hon'ble friend had referred was placed in his hands yesterday evening at 5 o'clock. It referred in detail to many provisions of the Bill, but he was obliged to say that it contained many misconceptions and mistakes, due no doubt to the hurry with which the memorial had been prepared. However, as the hon'ble Member (the Mahárájá) represented that the subject had not been considered from the point of view which the British Indian Association deemed worthy of consideration, and as the Hon'ble Mr. Inglis had also called attention to a desirable amendment in one of the sections, he was quite willing, after having communicated with His Excellency the President, to accept the suggestion that the Bill should be referred back to the Select Committee, on the understanding that it should be brought up again in Council at the first meeting after the return of His Excellency from Burma, and be ready then for consideration and passing into law. He moved that the Bill be returned to the Select Committee, and that the Hon'ble Mahárájá Jotíndra Mohan Tagore and the Hon'ble Mr. Inglis be added to the Committee.

His Excellency THE PRESIDENT said it seemed to him that the course suggested by his hon'ble friend who had just spoken was the right one in this case. The question had been carefully considered by the Government of India, and it was a mistake to suppose that they had not given consideration to the interests of both the parties who were concerned in this legislation. But, on the other hand, HIS EXCELLENCY did think it would be undesirable that any portion of the public should labour under the impression that the interests of those who were least able to represent their views in this matter

had not been fully considered; and, under these circumstances and in order especially to meet the views of the British Indian Association, he concurred with his friend Mahárájá Jotíndra Mohan Tagore that the Bill should be referred back to the Select Committee, with the addition of the hon'ble Members proposed, but on the distinct understanding that the Committee's final report on the Bill should be taken into consideration on the first day on which the Council would sit after His Excellency's return from Burma, which would probably be the 5th of January.

The Motion was put and agreed to.

SEDITIOUS PUBLICATIONS BILL.

The Hon'ble Mr. Gibbs introduced the Bill to amend the law relating to Seditious Publications, and moved that it be referred to a Select Committee consisting of the Hon'ble Messrs. Stokes, Thompson and Forbes, the Hon'ble Mahárájá Jotíndra Mohan Tagore and the Mover.

The Motion was put and agreed to.

The Hon'ble Mr. Gibbs also moved that the Bill and Statement of Objects and Reasons be published in the local official Gazettes in English and in such other languages as the Local Governments might think fit.

The Motion was put and agreed to.

NORTH-WESTERN PROVINCES LAND-REVENUE BILL.

The Hon'ble Mr. Crosthwaite moved for leave to introduce a Bill to consolidate and amend the law relating to Land-revenue and the jurisdiction of Revenue-officers in the North-Western Provinces. He said that the object of this Bill was briefly this, that section 29 of the present Land-revenue Law of the North-Western Provinces, Act XIX of 1873, enabled the Government to impose a rate upon land "for the purpose of defraying the salaries of patwáris and other charges incurred for the proper supervision, maintenance and correction of patwáris' records." The Government of the North-Western Provinces had undertaken to correct the village-records in the permanently-settled districts of those provinces; and Settlement-officers had to be appointed to supervise the work. They considered that, as the sole object of this work was to correct and frame the records, and as the Government had no pecuniary interest whatever in the matter, they were justified in defraying the salaries of the supervising officers from the fund which was formed from the proceeds of the rate imposed by section 29. But it had been held under legal advice that the practice was incorrect and not justified by the law; it was, therefore, proposed

to introduce a Bill to amend the law so far as to enable the salaries of these officers to be charged to the Patwárí Fund, and it was proposed at the same time, as there were two Acts, XIX of 1873 and VIII of 1879, which contained the present law, to consolidate the law in one enactment—a process which would be purely mechanical.

The Motion was put and agreed to.

SUNDRY BILLS.

The Hon'ble MR. STOKES moved that the Hon'ble Mr. Crosthwaite be added to the Select Committees on the following Bills:—

To define and amend the law relating to the Transfer of Property.

To provide for the Relief of Encumbered Estates in the Jhánsí Division of the North-Western Provinces.

To consolidate and amend the law relating to agricultural tenancies in the Central Provinces.

To consolidate and amend the law relating to Criminal Procedure.

To amend the Indian Penal Code.

To define and amend the law relating to Private Trusts and Trustees.

To define and amend the law relating to Easements and Licenses.

To amend the law relating to Court-fees.

To amend the law relating to the Civil Courts in Bengal, the North-Western Provinces and Assam.

The Motion was put and agreed to.

INDIAN PENAL CODE AND COURT FEES BILLS.

The Hon'ble MR. STOKES also moved that the Hon'ble Mr. Forbes be added to the Select Committees on the following Bills:—

To amend the Indian Penal Code.

To amend the law relating to Court-fees.

The Motion was put and agreed to.

TRADING COMPANIES AND STOWAWAYS BILLS.

The Hon'ble MR. STOKES then moved that the Hon'ble Mr. Inglis be added to the Select Committees on the following Bills:—

For the incorporation, regulation and winding-up of Trading Companies and other Associations.

To prohibit the landing of certain Stowaways, and to provide for the recovery of expenses incurred by Government in respect of such persons.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 5th January, 1882.

R. J. CROSTHWAITE,
Offg. Secy to the Govt. of India,
Legislative Department.

CALCUTTA;
The 15th December, 1881.

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